STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

2003 GENERAL ASSEMBLY

AT ITS

EXTRA SESSION 2004

BEGINNING ON

THURSDAY, THE FOURTH DAY OF NOVEMBER, A.D. 2004

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL

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STATE OF NORTH CAROLINA

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G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Easley are carried in this volume.

* Appointed September 1, 2004 to serve as Interim Superintendent of Public Instruction and sworn in as Superintendent of Public Instruction on September 7, 2004 to fill unexpired term of Michael Ward.

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SESSION LAWS

OF THE

STATE OF NORTH CAROLINA

EXTRA SESSION 2004

S.B. 2 **Session Law 2004-204 Extra Session**

AN ACT TO PROVIDE A TAX CREDIT FOR CERTAIN MAJOR COMPUTER MANUFACTURING FACILITIES AND TO ENHANCE CERTAIN EXISTING TAX INCENTIVES FOR THOSE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3G.

"Tax Incentives for Major Computer Manufacturing Facilities.

"**§ 105-129.60. Legislative findings.**

The General Assembly finds that:

(1) It is the policy of the State to stimulate economic activity and to create and maintain sustainable jobs for the citizens of the State in strategically important industries.

(2) Both short-term and long-term economic trends at the regional, State, national, and international levels have made the successful implementation of the State's economic development policies and programs both more critical and more challenging; in particular, national trade policies and the resulting impact on domestic competitiveness have made the retention of manufacturing jobs more difficult at a time of transition in the national, State, and regional economies.

(3) Manufacturing employment in the State has been disproportionately affected by trade policies and global economic trends, resulting in the loss of jobs by many in the State's capable industrial workforce.

(4) Computer manufacturing and distribution has been an important industry for the State and has prospered in this State due to our strong and productive workforce, focused worker training programs, research capabilities, tradition of innovation, and concentration of companies.

(5) The computer manufacturing and distribution industry will remain a vital part of the world's, nation's, and State's future economy as society becomes more dependent on advanced computer technology.

(6) It is the intent of the State to encourage the sustainability of this industry cluster in this State and to encourage the maintenance and growth of computer manufacturing and distribution employment in the State through tax policies, investments in training capacity, and other policies and programs.

(7) The State must be an innovative leader in creating policies and programs that encourage the maintenance of manufacturing jobs in this country and State and in the development of efforts to support manufacturers during the transitional period as they adapt to rapidly changing global conditions.

"**§ 105-129.61. Definitions.**

The following definitions apply in this Article:

(1) Computer manufacturing. – Defined in G.S. 105-164.14.

(2) Facility. – A single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

(3) Full-time job. – A permanent position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.

(4) Increased employment level. – The total number of new full-time jobs and new permanent part-time jobs converted into full-time equivalences created by the taxpayer at the facility with respect to which the credit is claimed, either directly or indirectly through a related entity or strategic partner, as of December 31 as compared to the employment level of the taxpayer as of December 31 in the year in which the taxpayer begins construction of the facility with respect to which the credit is claimed or as of the date the Secretary makes the written determination required under G.S. 105-129.62, whichever is earlier. Jobs transferred from one area in the State to another area in the State are not considered new jobs for the purposes of this Article and may not be included in the increased employment level.

(5) Related entity. – An entity for which the taxpayer possesses directly or indirectly at least eighty percent (80%) of the control and value.

(6) Strategic partner. – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

(7) Successor in business. – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the computer manufacturing and distribution business.

(8) Unit output. – The total number of computers and computer peripherals produced, assembled, or manufactured at the facility during the taxable year.

"**§ 105-129.62. Eligibility.**

(a) Determination by Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this Article with respect to a facility in this State only if the Secretary of Commerce makes a written determination that the taxpayer has or is expected to have an increased employment level at the facility of at least 1,200 within five years after the time that the facility is first used as a computer manufacturing and distribution facility and that the taxpayer, either directly or indirectly through a related entity or strategic partner, has invested or is expected to invest at least one hundred million dollars ($100,000,000) in private funds to construct a computer manufacturing and distribution facility over a five-year period. For the purposes of this Article, costs of construction may include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.

(b) Health Insurance. – A taxpayer is eligible for the credit allowed under this Article with respect to a facility in this State only if the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level provide health insurance for all of the full-time jobs at the facility with respect to which the credit is claimed each year it claims a credit or carryforward of a credit. For the purposes of this subsection, an entity provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level continue to provide health insurance for all the full-time jobs at the facility with respect to which the credit is claimed. If the taxpayer, or a related entity or strategic partner of the taxpayer whose employees are included in the increased employment level of the taxpayer, ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining carryforward of the credit.

(c) Environmental Impact. – A taxpayer is eligible for the credit allowed under this section with respect to a facility in this State only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and have had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. For the taxpayer's related entities and strategic partners, this subsection applies only to the activities of the related entity or strategic partner at the facility with respect to which a credit is claimed. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). Upon request, the Secretary of Environment and Natural Resources must notify the Department of Revenue of whether a person currently has any of these pending actions or has had any of these final determinations within the last five years.

(d) Safety and Health Programs. – A taxpayer is eligible for the credit allowed under this section with respect to a facility in this State only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no citations under the Occupational Safety and Health Act at the facility with respect to which the credit is claimed that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. Upon request, the Secretary of Labor must notify the Department of Revenue of whether a person has had these citations become final orders within the past three years.

(e) Overdue Tax Debts. – A taxpayer is eligible for the credit allowed under this section with respect to a facility only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no overdue tax debts that have not been satisfied or otherwise resolved.

(f) Relationship With Related Entities and Strategic Partners. – A taxpayer must obtain the written consent of related entities and strategic partners to include jobs created by those entities in the taxpayer's increased employment level. If a taxpayer fails to obtain this written consent, the taxpayer may not include jobs created by the applicable business in its increased employment level. This consent, once granted, is irrevocable. A job may not be included in the increased employment level of more than one entity. The taxpayer is responsible for providing all information needed to verify eligibility for the credit, including information relating to the related entities or strategic partners of the taxpayer.

"**§ 105-129.63. Determination by the Secretary of Commerce.**

The taxpayer must apply to the Secretary of Commerce for the determination required under G.S. 105-129.62. The application must be made under oath and must provide any information the Secretary requires in order to make the determination. The determination by the Secretary of Commerce is a factual determination. The Secretary must make this determination in any case in which the taxpayer can demonstrate performance or can provide a credible plan for performance.

If the taxpayer fails to create the required number of new jobs or to make the required investment, the information provided by the taxpayer on the application proves to have been false at the time it was given, and the person making the application knew or should have known that the information was false, the taxpayer forfeits any credits claimed under this Article with respect to the facility. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.64. Credit for major computer manufacturing facilities.**

(a) General Credit. – A taxpayer that meets the eligibility requirements of G.S. 105-129.62 is eligible for a credit against the taxes imposed by Articles 3 and 4 of this Chapter. For taxable years beginning with the 2006 taxable year, the amount of the credit allowable in a year is determined based on the taxable year, the unit output of the facility, the production factor, and the increased employment level at the facility in the current taxable year and previous taxable years.

(b) 2005 Taxable Year. – For taxable years beginning on or after January 1, 2005, but before January 1, 2006, the amount of the credit is equal to ten million dollars ($10,000,000) if the taxpayer, either directly or through a related entity, has invested at least twenty-five million dollars ($25,000,000) in private funds by the end of the taxable year to construct a computer manufacturing and distribution facility in this State.

(c) 2006-2009 Taxable Years. – For taxable years beginning on or after January 1, 2006, but before January 1, 2010, the maximum amount of the credit is ten million dollars ($10,000,000). The amount of the credit that may be claimed is determined by multiplying the employment level adjustment factor by the lesser of ten million dollars ($10,000,000) and the product of the unit output of the facility and the applicable production factor listed in subsection (f) of this section. For the purposes of this subsection, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by the applicable target increased employment level provided in the table below:

Year	Target Increased Employment Level
2006	600
2007	1,000
2008	1,100
2009	1,500

(d) 2010-2014 Taxable Years. – For taxable years beginning on or after January 1, 2010, but before January 1, 2015, the maximum amount of the credit is fifteen million dollars ($15,000,000) if the taxpayer has in any year attained an increased employment level of 1,500. Otherwise the maximum amount of the credit is ten million dollars ($10,000,000). The amount of the credit is determined as follows:

(1) If the taxpayer has ever attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is the lesser of fifteen million dollars ($15,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f) of this section. If the taxpayer's increased employment level has decreased by more than forty percent (40%) from that of the previous taxable year, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.

(2) If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of ten million dollars ($10,000,000) and the product of the unit output of the facility and the applicable production factor listed in subsection (f) of this section. For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by 1,500.

(e) 2015-2019 Taxable Years. – For taxable years beginning on or after January 1, 2015, but before January 1, 2020, the maximum amount of the credit is twenty million dollars ($20,000,000) if the taxpayer has in any year attained an increased employment level of 2,500. If the taxpayer has in any year attained an increased employment level of at least 1,500, but in no year has attained an increased

employment level of at least 2,500, the maximum amount of the credit is fifteen million dollars ($15,000,000). Otherwise the maximum amount of the credit is ten million dollars ($10,000,000). The amount of the credit is determined as follows:

(1) If the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's increased employment level for the current year is at least 1,500, the amount of the credit is the lesser of twenty million dollars ($20,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f) of this section.

(2) If the taxpayer has ever attained an increased employment level of at least 1,500 but has never attained an increased employment level of at least 2,500, or if the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's current increased employment level is less than 1,500, the amount of the credit that may be claimed is the lesser of fifteen million dollars ($15,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f) of this section. If the taxpayer's increased employment level has decreased by more than forty percent (40%) from that of the previous taxable year and (i) the increased employment level of the previous year was 1,500 or less or (ii) the increased employment level of the current year is 900 or less, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.

(3) If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of ten million dollars ($10,000,000) and the product of the unit output of the facility and the applicable production factor listed in subsection (f) of this section. For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's employment level for the year by 1,500.

(f) Production Factor. – For taxable years beginning on or after January 1, 2006, but before January 1, 2007, the production factor is fifteen dollars ($15.00). For all other taxable years, the production factor is six dollars and twenty-five cents ($6.25).

(g) Expiration. – If the taxpayer fails to attain an increased employment level of at least 1,200, either directly or in conjunction with its strategic partners and related entities, within five years after beginning construction of the facility with respect to which a credit is claimed or the taxpayer fails to invest at least one hundred million dollars ($100,000,000) in private funds to construct a computer manufacturing and distribution facility over a five-year period, the taxpayer may not take any further credits under this Article with respect to that facility. Failure to attain an increased employment level of 1,200 within the five years or to invest at least one hundred million dollars ($100,000,000) in private funds to construct the facility does not result in forfeiture of credits previously taken under this section unless the provisions of G.S. 105-129.63 apply.

"**§ 105-129.65. Allocation; cap; makeup; and carryforward.**

(a) Allocation. – The credit allowed by this Article may be taken against the franchise taxes levied under Article 3 of this Chapter and the income taxes levied under Article 4 of this Chapter. When the taxpayer claims a credit under this Article, the taxpayer must elect the percentage of the credit to be applied against the taxes levied under Article 3 of this Chapter with any remaining percentage to be applied against the taxes levied under Article 4 of this Chapter. This election is not binding for the year in which it is made or for any carryforwards of that credit. A taxpayer may elect a different allocation for each year in which the taxpayer qualifies for a credit.

(b) Cap. – The amount of credit claimed in a taxable year under this Article may not exceed the lesser of the amount determined under G.S. 105-129.64 and the total amount of tax imposed under Articles 3 and 4 of this Chapter, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. Credits that may eliminate only a portion of the taxpayer's liability must be taken before credits that may eliminate all of a taxpayer's liability, which in turn must be taken before any credits that are refundable. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this Article for previous tax years.

(c) Makeup. – In any year in which the amount of the credit calculated based on output exceeds the applicable cap under G.S. 105-129.64, the excess credit may be credited to a make up account. Amounts credited to the make up account may remain in the account for seven years or until they are used as provided in this subsection, whichever is earlier. In any year in which the amount of the credit calculated based on output is less than the applicable cap under G.S. 105-129.64, the taxpayer may increase the credit allowed for that taxable year to the cap amount, as adjusted by any applicable employment level adjustment factor, by using excess credit available in the make up account. A successor in business may take the amounts available in a make up account of a predecessor corporation as if they were excess credits available in a make up account of the successor in business.

(d) Carryforward. – Any unused portion of a credit allowed under this Article may be carried forward for the next succeeding 25 years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

"**§ 105-129.66. Sunset.**

This Article is repealed for business activities occurring in taxable years beginning on or after January 1, 2020."

SECTION 2. G.S.105-129.4 is amended by adding a new subsection to read:

"(b7) Major Computer Facilities. – A taxpayer that is otherwise eligible for a tax credit under this Article and who satisfies the conditions of G.S. 105-129.62 is eligible for the major computer facility enhancements provided for credits under this Article. The major computer facility enhancements are the following:

(1) The wage standard requirement does not apply to the activities of the taxpayer at the major computer facility.

(2) For the credit for creating jobs under G.S. 105-129.8, the amount of the credit is increased by four thousand dollars ($4,000) per job for jobs at the major computer facility.

(3) For the credit for investment in machinery and equipment under G.S. 105-129.9, the applicable percentage is seven percent (7%) and the applicable threshold is zero dollars ($0.00) regardless of the

enterprise tier designation of the county in which the major computer facility is located.

(4) For the credit for worker training under G.S. 105-129.11, the maximum amount of the credit per worker trained is one thousand dollars ($1,000) regardless of the enterprise tier designation of the county in which the major computer facility is located.

(5) For the credit for substantial investment in other property under G.S. 105-129.12A, the taxpayer is eligible for the credit regardless of the enterprise tier designation of the county in which the major computer facility is located."

SECTION 3. G.S. 105-164.14(j)(2) and (3) read as rewritten:

"(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61.

(3) Industries. – This subsection applies to the following industries:

a. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

b. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term ~~does not include~~ includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and ~~terminals.~~terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
1. Manufacturing complete automobiles and light-duty motor vehicles.
2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
2. Processing botanical drugs and herbs by grading, grinding, and milling.
3. Isolating active medicinal principals from botanical drugs and herbs.
4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components."

SECTION 4. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(30) To verify with a related entity or strategic partner information relating to that entity provided by a taxpayer claiming a credit under Article 3G of this Chapter."

SECTION 5. Section 3 of this act becomes effective January 1, 2005, and applies to sales made on or after that date. The remainder of this act is effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005.

In the General Assembly read three times and ratified this the 4th day of November, 2004.

RESOLUTIONS

OF THE

STATE OF NORTH CAROLINA

EXTRA SESSION 2004

H.J.R. 2 **Resolution 2004-14 Extra Session**

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE 2004 EXTRA SESSION.

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

SECTION 1. When the House of Representatives and the Senate, constituting the 2004 Extra Session of the 2003 General Assembly, do adjourn on Thursday, November 4, 2004, they stand adjourned sine die.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of November, 2004.

INDEX TO SESSION LAWS
2003 GENERAL ASSEMBLY
EXTRA SESSION 2004

C

Corporations, For-Profit
Taxes and assessments --*see* that heading

E

Employment
Major computer manufacturer tax credits 204

T

Taxes and Assessments
Tax credits
Major computer manufacturer..... 204

INDEX TO RESOLUTIONS
2003 GENERAL ASSEMBLY
EXTRA SESSION 2004

A

Adjournment 14

STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

2005 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 2005

BEGINNING ON

WEDNESDAY, THE TWENTY-SIXTH DAY OF JANUARY, A.D. 2005

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL

PUBLISHED BY AUTHORITY

STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 2005 GENERAL ASSEMBLY

BEVERLY E. PERDUE (D)	President of the Senate	Craven
JAMES B. BLACK (D)	Speaker of the House	Mecklenburg

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by election and comprising the Council of State)

MICHAEL F. EASLEY (D)	Governor	Brunswick
BEVERLY E. PERDUE (D)	Lieutenant Governor	Craven
ELAINE F. MARSHALL (D)	Secretary of State	Harnett
LES W. MERRITT (R).	Auditor	Wake
RICHARD H. MOORE (D)	Treasurer	Vance
*JUNE S. ATKINSON (D)	Superintendent of Public Instruction	Wake
ROY A. COOPER, III (D)	Attorney General	Wake
STEVEN W. TROXLER. (R)	Commissioner of Agriculture	Guilford
CHERIE K. BERRY (R)	Commissioner of Labor	Catawba
JAMES E. LONG (D)	Commissioner of Insurance	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is designated Democrat by the abbreviation "D" and designated Republican by the abbreviation "R".

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Easley are carried in this volume.

* Results of election were in controversy until General Assembly decision on August 23, 2005, awarding contested election to June S. Atkinson. Patricia N. Willoughby continued to serve as Superintendent from previous term through May 31, 2005. Janice Davis was then appointed Interim Superintendent of Public Instruction from June 1 until August 23, 2005.

SENATE OFFICERS

Name	*Position*	*Address*
BEVERLY E. PERDUE	President	New Bern, Craven County
MARC BASNIGHT	President Pro Tempore	Manteo, Dare County
CHARLIE S. DANNELLY	Deputy President Pro Tempore	Charlotte, Mecklenburg County
JANET B. PRUITT	Principal Clerk	Raleigh, Wake County
TED HARRISON	Reading Clerk	Cary, Wake County
CECIL GOINS	Sergeant–at–Arms	Raleigh, Wake County

SENATORS

District	Name	Party	County	Address
1	MARC BASNIGHT	D	Dare	Manteo
2	SCOTT THOMAS	D	Craven	New Bern
3	S. CLARK JENKINS	D	Edgecombe	Tarboro
4	ROBERT L. HOLLOMAN	D	Hertford	Ahoskie
5	JOHN H. KERR III	D	Wayne	Goldsboro
6	HARRY BROWN	R	Onslow	Jacksonville
7	DOUG BERGER	D	Franklin	Youngsville
8	R.C. SOLES, JR.	D	Columbus	Tabor City
9	JULIA BOSEMAN	D	New Hanover	Wilmington
10	CHARLES W. ALBERTSON	D	Duplin	Beulaville
11	A.B. SWINDELL IV	D	Nash	Nashville
12	FRED SMITH	R	Johnston	Clayton
13	DAVID F. WEINSTEIN	D	Robeson	Lumberton
14	VERNON MALONE	D	Wake	Raleigh
15	NEAL HUNT	R	Wake	Raleigh
16	JANET COWELL	D	Wake	Raleigh
17	RICHARD Y. STEVENS	R	Wake	Cary
18	ROBERT ATWATER	D	Chatham	Chapel Hill
19	TONY RAND	D	Cumberland	Fayetteville
20	JEANNE H. LUCAS	D	Durham	Durham
21	LARRY SHAW	D	Cumberland	Fayetteville
22	HARRIS BLAKE	R	Moore	Pinehurst
23	ELEANOR KINNAIRD	D	Orange	Carrboro
24	HUGH WEBSTER	R	Alamance	Burlington
25	WILLIAM R. PURCELL	D	Scotland	Laurinburg
26	PHILIP E. BERGER	R	Rockingham	Eden
27	KAY R. HAGAN	D	Guilford	Greensboro
28	KATIE G. DORSETT	D	Guilford	Greensboro
29	JERRY W. TILLMAN	R	Randolph	Archdale
30	DON EAST	R	Surry	Pilot Mountain
31	HAMILTON C. HORTON, JR.	R	Forsyth	Winston-Salem
32	LINDA GARROU	D	Forsyth	Winston-Salem
33	STAN BINGHAM	R	Davidson	Denton
34	ANDREW C. BROCK	R	Davie	Mocksville
35	W. EDWARD GOODALL, JR.	R	Union	Weddington
36	FLETCHER L. HARTSELL, JR.	R	Cabarrus	Concord
37	DANIEL G. CLODFELTER	D	Mecklenburg	Charlotte
38	CHARLIE S. DANNELLY	D	Mecklenburg	Charlotte
39	ROBERT PITTENGER	R	Mecklenburg	Charlotte
40	MALCOLM GRAHAM	D	Mecklenburg	Charlotte
41	JAMES FORRESTER	R	Gaston	Stanley
42	AUSTIN M. ALLRAN	R	Catawba	Hickory
43	DAVID W. HOYLE	D	Gaston	Dallas
44	JIM JACUMIN	R	Burke	Connelly Springs
45	JOHN A. GARWOOD	R	Wilkes	North Wilkesboro
46	WALTER H. DALTON	D	Rutherford	Rutherfordton
47	KEITH W. PRESNELL	R	Yancey	Burnsville
48	TOM APODACA	R	Henderson	Hendersonville
49	MARTIN L. NESBITT	D	Buncombe	Asheville
50	JOHN J. SNOW, JR.	D	Cherokee	Murphy

HOUSE OFFICERS

Name	*Position*	*Address*
JAMES B. BLACK	Speaker	Matthews, Mecklenburg County
RICHARD T. MORGAN	Speaker Pro Tempore	Eagle Springs, Moore County
DENISE G. WEEKS	Principal Clerk	Willow Springs, Wake County
ROBERT R. SAMUELS	Sergeant-at-Arms	Charlotte, Mecklenburg County

REPRESENTATIVES

District		Name	Party	County	Address
1		WILLIAM C. OWENS, JR.	D	Pasquotank	Elizabeth City
2		WILLIAM T. CULPEPPER, III	D	Chowan	Edenton
3		ALICE GRAHAM UNDERHILL	D	Craven	New Bern
4		RUSSELL E. TUCKER	D	Duplin	Pink Hill
5		HOWARD J. HUNTER, JR.	D	Hertford	Ahoskie
6		ARTHUR J. WILLIAMS	D	Beaufort	Washington
7	*	JOHN D. HALL	D	Halifax	Scotland Neck
8		EDITH D. WARREN	D	Pitt	Farmville
9		MARIAN N. MCLAWHORN	D	Pitt	Grifton
10		STEPHEN A. LAROQUE	R	Lenoir	Kinston
11		LOUIS M. PATE, JR.	R	Wayne	Mt. Olive
12		WILLIAM L. WAINWRIGHT	D	Craven	Havelock
13		JEAN R. PRESTON	R	Carteret	Emerald Isle
14		GEORGE G. CLEVELAND	R	Onslow	Jacksonville
15		W. ROBERT GRADY	R	Onslow	Jacksonville
16		CAROLYN H. JUSTICE	R	Pender	Hampstead
17		BONNER L. STILLER	R	Brunswick	Oak Island
18		THOMAS E. WRIGHT	D	New Hanover	Wilmington
19		DANIEL F. MCCOMAS	R	New Hanover	Wilmington
20		DEWEY L. HILL	D	Columbus	Whiteville
21		LARRY M. BELL	D	Sampson	Clinton
22		EDD NYE	D	Bladen	Elizabethtown
23		JOE P. TOLSON	D	Edgecombe	Pinetops
24		JEAN FARMER-BUTTERFIELD	D	Wilson	Wilson
25		WILLIAM G. DAUGHTRIDGE, JR.	R	Nash	Rocky Mount
26		N. LEO DAUGHTRY	R	Johnston	Smithfield
27		MICHAEL H. WRAY	D	Northampton	Gaston
28		JAMES H. LANGDON, JR.	R	Johnston	Angier
29		PAUL MILLER	D	Durham	Durham
30		PAUL LUEBKE	D	Durham	Durham
31		HENRY M. MICHAUX, JR.	D	Durham	Durham
32		JAMES W. CRAWFORD, JR.	D	Granville	Oxford
33		BERNARD ALLEN	D	Wake	Raleigh
34		GRIER MARTIN, III	D	Wake	Raleigh
35		JENNIFER WEISS	D	Wake	Cary
36		J. NELSON DOLLAR	R	Wake	Cary
37		PAUL STAM	R	Wake	Apex
38		DEBORAH K. ROSS	D	Wake	Raleigh
39		LINDA COLEMAN	D	Wake	Knightdale
40		RICK L. EDDINS	R	Wake	Raleigh
41		J. RUSSELL CAPPS	R	Wake	Raleigh
42		MARVIN W. LUCAS	D	Cumberland	Spring Lake
43		MARY E. MCALLISTER	D	Cumberland	Fayetteville
44		MARGARET H. DICKSON	D	Cumberland	Fayetteville
45		RICK GLAZIER	D	Cumberland	Fayetteville
46		DOUGLAS Y. YONGUE	D	Scotland	Laurinburg
47		RONNIE N. SUTTON	D	Robeson	Pembroke
48		GARLAND E. PIERCE	D	Scotland	Wagram
49		LUCY T. ALLEN	D	Franklin	Louisburg
50		BILL FAISON	D	Orange	Durham
51		JOHN I. SAULS	R	Lee	Sanford
52		RICHARD T. MORGAN	R	Moore	Eagle Springs
53		DAVID R. LEWIS	R	Harnett	Dunn
54		JOE HACKNEY	D	Orange	Chapel Hill
55		W.A. "WINKIE" WILKINS	D	Person	Roxboro
56		VERLA C. INSKO	D	Orange	Chapel Hill

57	M. PRICEY HARRISON	D	Guilford	Greensboro
58	ALMA S. ADAMS	D	Guilford	Greensboro
59	MAGGIE JEFFUS	D	Guilford	Greensboro
60	EARL JONES	D	Guilford	Greensboro
61	LAURA I. WILEY	R	Guilford	High Point
62	JOHN M. BLUST	R	Guilford	Greensboro
63	ALICE L. BORDSEN	D	Alamance	Mebane
64	CARY D. ALLRED	R	Alamance	Burlington
65	E. NELSON COLE	D	Rockingham	Reidsville
66	MELANIE WADE GOODWIN.	D	Richmond	Hamlet
67	DAVID D. ALMOND, JR.	R	Stanly	Stanfield
68	J. CURTIS BLACKWOOD, JR.	R	Union	Matthews
69	PRYOR A. GIBSON, III	D	Anson	Wadesboro
70	ARLIE F. CULP	R	Randolph	Ramseur
71	LARRY W. WOMBLE	D	Forsyth	Winston-Salem
72	EARLINE W. PARMON	D	Forsyth	Winston-Salem
73	LARRY R. BROWN.	R	Forsyth	Kernersville
74	DALE R. FOLWELL	R	Forsyth	Winston-Salem
75	WILLIAM C. MCGEE	R	Forsyth	Clemmons
76	FRED F. STEEN, II	R	Rowan	Landis
77	LORENE T. COATES	D	Rowan	Salisbury
78	HAROLD J. BRUBAKER	R	Randolph	Asheboro
79	JULIA C. HOWARD	R	Davie	Mocksville
80	JERRY C. DOCKHAM	R	Davidson	Denton
81	L. HUGH HOLLIMAN	D	Davidson	Lexington
82	JEFFREY L. BARNHART	R	Cabarrus	Concord
83	LINDA P. JOHNSON	R	Cabarrus	Kannapolis
84	PHILLIP D. FRYE	R	Mitchell	Spruce Pine
85	MITCH GILLESPIE	R	McDowell	Marion
86	WALTER G. CHURCH, SR.	D	Burke	Valdese
87	EDGAR V. STARNES	R	Caldwell	Granite Falls
88	MARK W. HOLLO	R	Alexander	Taylorsville
89	MITCHELL S. SETZER	R	Catawba	Catawba
90	JAMES A. HARRELL, III	D	Surry	Elkin
91	BRYAN R. HOLLOWAY	R	Stokes	King
92	GEORGE M. HOLMES	R	Yadkin	Hamptonville
93	W. EUGENE WILSON	R	Watauga	Boone
94	R. TRACY WALKER	R	Wilkes	Wilkesboro
95	KAREN B. RAY	R	Iredell	Mooresville
96	MARK K. HILTON	R	Catawba	Conover
97	JOE L. KISER	R	Lincoln	Vale
98	JOHN W. RHODES	R	Mecklenburg	Cornelius
99	DREW P. SAUNDERS	D	Mecklenburg	Huntersville
100	JAMES B. BLACK	D	Mecklenburg	Matthews
101	BEVERLY M. EARLE	D	Mecklenburg	Charlotte
102	BECKY CARNEY	D	Mecklenburg	Charlotte
103	JIM GULLEY	R	Mecklenburg	Matthews
104	W. EDWIN MCMAHAN	R	Mecklenburg	Charlotte
105	DOUGLAS S. VINSON	R	Mecklenburg	Charlotte
106	MARTHA B. ALEXANDER	D	Mecklenburg	Charlotte
107	W. PETE CUNNINGHAM	D	Mecklenburg	Charlotte
108	JOHN M. RAYFIELD	R	Gaston	Belmont
109	WILLIAM A. CURRENT, SR.	R	Gaston	Gastonia
110	DEBBIE A. CLARY	R	Cleveland	Cherryville
111	TIM MOORE	R	Cleveland	Shelby
112	BOBBY F. ENGLAND	D	Rutherford	Ellenboro
113	TRUDI WALEND	R	Transylvania	Brevard
114	SUSAN C. FISHER	D	Buncombe	Asheville
115	D. BRUCE GOFORTH	D	Buncombe	Asheville
116	WILMA M. SHERRILL	R	Buncombe	Asheville
117	CAROLYN K. JUSTUS	R	Henderson	Hendersonville
118	RAYMOND C. RAPP	D	Madison	Mars Hill
119	R. PHILLIP HAIRE	D	Jackson	Sylva
120	ROGER WEST	R	Cherokee	Marble

* Deceased March 17, 2005 – Edward Jones appointed April 5, 2005 to fill unexpired term.

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE MARC BASNIGHT, *COCHAIR*

HOUSE SPEAKER JAMES B. BLACK, *COCHAIR*

SEN. THOMAS M. APODACA	REP. BECKY CARNEY
SEN. LINDA D. GARROU	REP. WILLIAM T. CULPEPPER, III
SEN. VERNON MALONE	REP. JULIA CRAVEN HOWARD
SEN. ANTHONY E. RAND	REP. RICHARD T. MORGAN
SEN. LARRY SHAW	REP. WILLIAM C. OWENS, JR.
SEN. R.C. SOLES, JR.	REP. WILMA M. SHERRILL
SEN. JERRY W. TILLMAN	REP. WILLIAM L. WAINWRIGHT

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR. ..... Legislative Services Officer
GERRY F. COHEN ..... Director of the Bill Drafting Division
JAMES D. JOHNSON ..... Director of the Fiscal Research Division
DENNIS W. MCCARTY ..... Director of the Information Systems Division
TONY C. GOLDMAN ..... Director of the Administrative Division
TERRENCE D. SULLIVAN ..... Director of the Research Division

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I
DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. The equality and rights of persons.

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. Sovereignty of the people.

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. Internal government of the State.

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. Secession prohibited.

This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. Allegiance to the United States.

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. Separation of powers.

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. Suspending laws.

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. Representation and taxation.

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. Frequent elections.

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. Free elections.

All elections shall be free.

Sec. 11. Property qualifications.

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. Right of assembly and petition.

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. Religious liberty.

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. Freedom of speech and press.

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. Ex post facto laws.

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. Slavery and involuntary servitude.

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. Court shall be open.

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. Law of the land; equal protection of the laws.

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. General warrants.

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. Inquiry into restraints on liberty.

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. Modes of prosecution.

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. Rights of accused.

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. Right of jury trial in civil cases.

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. Jury service.

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. Bail, fines, and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. Imprisonment for debt.

There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. Treason against the State.

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. Militia and the right to bear arms.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. Quartering of soldiers.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. Exclusive emoluments.

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. Hereditary emoluments and honors.

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. Perpetuities and monopolies.

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. Recurrence to fundamental principles.

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. Other rights of the people.

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

Sec. 37. Rights of victims of crime.

(1) Basic rights. Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

(2) No money damages; other enforcement. Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) No ground for relief in criminal case. The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. (1995, c. 438, s. 1.)

ARTICLE II
LEGISLATIVE

Section 1. Legislative power.

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. Number of Senators.

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. Senate districts; apportionment of Senators.

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. Number of Representatives.

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. Representative districts; apportionment of Representatives.

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. Qualifications for Senator.

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. Qualifications for Representative.

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. Elections.

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. Term of office.

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. Vacancies.

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. Sessions.

(1) Regular Sessions. The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) Extra sessions on legislative call. The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. Oath of members.

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. President of the Senate.

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. Other officers of the Senate.

(1) President Pro Tempore - succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) President Pro Tempore - temporary succession. During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) Other officers. The Senate shall elect its other officers.

Sec. 15. Officers of the House of Representatives.

The House of Representatives shall elect its Speaker and other officers.

Sec. 16. Compensation and allowances.

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. Journals.

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. Protests.

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. Record votes.

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. Powers of the General Assembly.

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. Style of the acts.

The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. Action on bills.

(1) Bills subject to veto by Governor; override of veto. Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) Amendments to Constitution of North Carolina. Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) Amendments to Constitution of the United States. Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) Joint resolutions. Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) Other exceptions. Every bill:

(a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;

(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;

(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or

(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) Local bills. Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

(a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or

(b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) Time for action by Governor; reconvening of session. If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider

vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) Return of bills after adjournment. For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment. (1995, c. 5, s. 1.)

Sec. 23. Revenue bills.

No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. Limitations on local, private, and special legislation.

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;
- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) Repeals. Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) Prohibited acts void. Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) General laws. The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III
EXECUTIVE

Section 1. Executive power.

The executive power of the State shall be vested in the Governor.

Sec. 2. Governor and Lieutenant Governor: election, term, and qualifications.

(1) Election and term. The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Qualifications. No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. Succession to office of Governor.

(1) Succession as Governor. The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) Succession as Acting Governor. During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) Physical incapacity. The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) Mental incapacity. The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) Impeachment. Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. Oath of office for Governor.

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. Duties of Governor.

(1) Residence. The Governor shall reside at the seat of government of this State.

(2) Information to General Assembly. The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) Budget. The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) Execution of laws. The Governor shall take care that the laws be faithfully executed.

(5) Commander in Chief. The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) Clemency. The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) Extra sessions. The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) Appointments. The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) Information. The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) Administrative reorganization. The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the

State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) Reconvened sessions. The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die. If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term. (1969, c. 932, s. 1; 1977, c. 690, s. 1; 1995, c. 5, s. 2.)

Sec. 6. Duties of the Lieutenant Governor.

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. Other elective officers.

(1) Officers. A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Duties. Their respective duties shall be prescribed by law.

(3) Vacancies. If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) Interim officers. Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may

appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) Acting officers. During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) Determination of incapacity. The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) Special Qualifications for Attorney General. Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. Council of State.

The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. Compensation and allowances.

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. Seal of State.

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. Administrative departments.

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV
JUDICIAL

Section 1. Judicial power.

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the

government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. General Court of Justice.

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. Judicial powers of administrative agencies.

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. Court for the Trial of Impeachments.

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. Appellate division.

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. Court of Appeals.

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. Retirement of Justices and Judges.

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. Superior Courts.

(1) Superior Court districts. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly. (2004-128, s. 16.)

Sec. 11. Assignment of Judges.

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) Court of Appeals. The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) Superior Court. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) District Courts; Magistrates. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) Waiver. The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) Appeals. The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. Forms of action; rules of procedure.

(1) Forms of action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. Waiver of jury trial.

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. Administration.

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. Removal of Judges, Magistrates and Clerks.

(1) Removal of Judges by the General Assembly. Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) Additional method of removal of Judges. The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) Removal of Magistrates. The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) Removal of Clerks. Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. District Attorney and Prosecutorial Districts.

(1) District Attorneys. The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) Prosecution in District Court Division. Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. Vacancies.

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. Revenues and expenses of the judicial department.

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. Fees, salaries, and emoluments.

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. Qualification of Justices and Judges.

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V
FINANCE

Section 1. No capitation tax to be levied.

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. State and local taxation.

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) Special tax areas. Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) Purposes of property tax. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) Income tax. The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. Limitations upon the increase of State debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforeseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections, or to repel invasions;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) Gift or loan of credit regulated. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) Definitions. A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) Certain debts barred. The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) Outstanding debt. Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. Limitations upon the increase of local government debt.

(1) Regulation of borrowing and debt. The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) Gift or loan of credit regulated. No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person,

association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) Certain debts barred. No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) Definitions. A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) Outstanding debt. Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. Acts levying taxes to state objects.

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. Inviolability of sinking funds and retirement funds.

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) Retirement funds. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. Drawing public money.

(1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) Local treasury. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. Health care facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost

incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. Capital projects for industry.

Nothwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. Joint ownership of generation and transmission facilities.

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. Capital projects for agriculture.

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. Higher Education Facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. Seaport and airport facilities.

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

(a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;

(b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

(c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

Sec. 14. Project development financing.

Notwithstanding Section 4 of this Article, the General Assembly may enact general laws authorizing any county, city, or town to define territorial areas in the county, city, or town and borrow money to be used to finance public improvements associated with private development projects within the territorial areas, as provided in this section. The General Assembly shall set forth by statute the method for determining the size of the territorial area and the issuing unit. This method is conclusive. When a territorial area is defined pursuant to this section, the county shall determine the current assessed value of taxable real and personal property in the territorial area. Thereafter, property in the territorial area continues to be subject to taxation to the same extent and in like manner as property not in the territorial area, but the net proceeds of taxes levied on the excess, if any, of the assessed value of taxable real and personal property in the territorial area at the time the taxes are levied over the assessed value of taxable real and personal property in the territorial area at the time the territorial area was defined may be set aside. The instruments of indebtedness authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect.

ARTICLE VI
SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote.

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. Qualifications of voter.

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) Residence period for presidential elections. The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. Registration.

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. Dual office holding.

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) Exceptions. The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. Continuation in office.

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII
LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government.

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. Sheriffs.

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. Merged or consolidated counties.

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII
CORPORATIONS

Section 1. Corporate charters.

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. Corporations defined.

The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX
EDUCATION

Section 1. Education encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. Uniform system of schools.

(1) General and uniform system: term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. School attendance.

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. State Board of Education.

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. Powers and duties of Board.

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. State school fund.

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State,

and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. County school fund; State fund for certain moneys.

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. (2003-423, s.1.)

Sec. 8. Higher education.

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. Benefits of public institutions of higher education.

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. Escheats.

(1) Escheats prior to July 1, 1971. All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) Escheats after June 30, 1971. All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X
HOMESTEADS AND EXEMPTIONS

Section 1. Personal property exemptions.

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than $500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. Homestead exemptions.

(1) Exemption from sale; exceptions. Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than $1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) Exemption for benefit of children. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) Exemption for benefit of surviving spouse. If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Conveyance of homestead. Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. Mechanics' and laborers' liens.

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

Sec. 4. Property of married women secured to them.

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. Insurance.

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI
PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. (1995, c. 429, s. 2.)

Sec. 2. Death punishment.

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. Charitable and correctional institutions and agencies.

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. Welfare policy; board of public welfare.

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII
MILITARY FORCES

Section 1. Governor is Commander in Chief.

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII
CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. Convention of the People.

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. Power to revise or amend Constitution reserved to people.

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. Revision or amendment by Convention of the People.

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. Revision or amendment by legislative initiation.

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV
MISCELLANEOUS

Section 1. Seat of government.
The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. State boundaries.
The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. General laws defined.
Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. Continuity of laws; protection of office holders.
The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. Conservation of natural resources.
It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by a law enacted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the 'State Nature and Historic Preserve,' and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General

Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes. (1971, c. 630, s. 1; as amended)

SESSION LAWS

OF THE

STATE OF NORTH CAROLINA

REGULAR SESSION 2005

S.B. 7 **Session Law 2005-1**

AN ACT TO ENACT THE HURRICANE RECOVERY ACT OF 2005, MAKING FINDINGS AS TO DAMAGE CAUSED BY THE HURRICANES THAT STRUCK NORTH CAROLINA IN 2004, CONCERNING ESTABLISHMENT OF THE DISASTER RELIEF RESERVE FUND, MAKING APPROPRIATIONS TO THE DISASTER RELIEF RESERVE FUND, DIRECTING THE REESTABLISHMENT AND MODIFICATION OF HURRICANE FLOYD RECOVERY PROGRAMS, AUTHORIZING ESTABLISHMENT OF NEW PROGRAMS, EXPANSION OF EXISTING PROGRAMS, AND MODIFICATION OF EXISTING PROGRAMS TO IMPLEMENT THIS ACT, AUTHORIZING TRANSFER OF FUNDS TO FEDERAL AGENCIES AND LOCAL GOVERNMENTS, AUTHORIZING TIME-LIMITED POSITIONS TO IMPLEMENT THIS ACT, PROVIDING FOR SUBROGATION BY THE STATE OF CERTAIN INSURANCE CLAIMS, AUTHORIZING ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS, PROVIDING FOR TAX EXEMPTION OF BENEFITS, DIRECTING THE MAPPING OF FLOOD PLAINS AND THE IDENTIFICATION OF POTENTIAL LANDSLIDE AREAS AND STREAM BANK EROSION, DIRECTING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CAUSES OF FLOODING IN CERTAIN AREAS AND DETERMINE MEASURES TO PREVENT OR MITIGATE FUTURE FLOODING, DIRECTING THE GOVERNOR TO MAINTAIN THE REDEVELOPMENT OFFICE IN WESTERN NORTH CAROLINA, APPROPRIATING FUNDS TO RESTORE AND REPAIR CERTAIN PUBLIC BUILDINGS IN HYDE COUNTY DAMAGED BY HURRICANE ISABEL AND ESTABLISHING REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT

SECTION 1. This act shall be known as "The Hurricane Recovery Act of 2005."

PART II. LEGISLATIVE FINDINGS
DAMAGE CAUSED BY 2004 HURRICANES AND TROPICAL STORMS

SECTION 2.(a) The General Assembly finds that the State of North Carolina endured six hurricanes during the late summer and fall of 2004. In the Western region of the State, Hurricanes Frances and Ivan dumped heavy rains that led to flooding and landslides throughout the region. Eastern North Carolina, including areas along the coast and the Sandhills, were struck by Hurricanes Alex, Bonnie, Charlie, and Jeanne. Wind damage and flooding were the primary source of damage in the east.

SECTION 2.(b) The General Assembly finds that Hurricanes Frances and Ivan wrought havoc upon Western North Carolina impacting the region on a scale not experienced before in that area of the State. Flooding and landslides destroyed infrastructure, roads, bridges, homes, businesses, farmland, and crops, damaging the civil, social, economic, and environmental well-being of Western North Carolina. The economic base of the region has been undermined as the result of business closures, crop and aquaculture losses, and revenue losses to the extent that many individuals' ability to support themselves and their families is threatened and may be lost completely without assistance from the State. A disaster of this magnitude affects the entire State. Extraordinary assistance to the region is necessary if Western North Carolina, and with it the economic well-being of the State, is to recover from the effects of the damage inflicted by Hurricanes Frances and Ivan.

SECTION 2.(c) The General Assembly finds that as a result of the hurricanes in Western North Carolina:

(1) The President of the United States issued two federal disaster declarations for the Western region of the State.

(2) Eleven people lost their lives.

(3) People lost their loved ones, their homes, sources of livelihood, and, in some instances, their communities. During Hurricane Ivan, the community of Peeks Creek was devastated by a debris flow triggered by the heavy rains. The debris flow traveled speeds as great as 33 miles per hour for two and a quarter miles from the top of Fishhawk Mountain. Five persons were killed, and 15 homes destroyed by the flow that was estimated to be several hundred feet wide and up to 40 feet high. Other communities that were particularly hard hit by landslides include the Starnes Creek area in Buncombe County, the Little Pine area in Madison County, the White Laurel community in Watauga County, and Bear Rock Estates in Henderson County.

(4) Sixty-two homes were destroyed, and 11,107 homes suffered damage in Hurricane Frances. Another 78 homes were destroyed, and 5,127 homes damaged in Hurricane Ivan. Eighty-five landslides were reported as a result of the 27+ inches of rain that fell on the region. Many persons did not have flood insurance, as they did not know that there was a danger of flooding where they lived. Further, people could not know the landslide risks associated with their housing location because such maps are not readily available. The State needs to update current flood mapping for and prepare landslide zone mapping for the region so that homes may be rebuilt in safe areas. Homes lying within flood and landslide zones need to be relocated to mitigate the possibility of further damage to life and property should subsequent

events occur. Additional State assistance to homeowners is necessary to accomplish these goals and to assure that there is safe and adequate housing for the citizens of the affected area.

(5) The region also lost rental properties that provided needed housing for those who cannot afford to purchase their own homes. The impact of the hurricanes on the regional economy is such that sufficient rental housing at affordable prices may not be built to replace the property damaged or destroyed, leaving persons who were forced from their homes unable to obtain adequate housing.

(6) Landslides and flooding damaged or destroyed at least 272 private roads, culverts and bridges, cutting off numerous families from access to emergency services and access to State roads.

(7) The Small Business Administration reported receiving 10,113 referrals for business loan applications from the Federal Emergency Management Agency to cover physical damage to businesses. Of these requests for applications, however, only 2,080 (around twenty percent (20%)) were returned to the SBA for processing. The numbers suggest both the numbers of businesses that suffered physical damage as a result of the hurricane and the inability of many businesses in the region to take on additional debt. Without additional assistance, many businesses may not be able to reopen, and jobs will be lost.

(8) Reports from the region indicated that the town of Canton lost forty percent (40%) of its business district in the floods attending Ivan. Blue Ridge Paper, the largest manufacturing employer in Western North Carolina, reportedly suffered several million dollars in flood damages from Hurricane Frances alone. The flooding a week later from Hurricane Ivan was two to three feet above the level experienced by the plant during Frances. Biltmore Village, a community near the Biltmore Estate, was almost completely inundated by floodwaters of the Swannanoa.

(9) According to North Carolina Department of Commerce reports, the region lost an estimated eighty-seven million dollars ($87,000,000) in tourism revenue during the three-week period after the hurricanes struck.

(10) The agricultural economy of the region was seriously affected. Early estimates of crops and acreage affected included thousands of acres of fruits and vegetables, hay, corn, soybeans, and tobacco. In Henderson County alone, approximately 90,000 of the county's 1,000,000 apple trees were downed. Greenhouse and nursery crops were also seriously affected. At least five trout farms reported extensive physical damage and losses of over 160,000 pounds of fish. In addition to crop and fish losses, there was extensive damage to farmland through erosion and flooding, and many farms suffered damage to farm structures. Most farmers cannot afford to take on additional debt to rehabilitate damaged fields, rebuild and repair farm structures, purchase new equipment, replant trees, or replace inventory. Many farmers may be unable to continue farming without assistance from the State. It is therefore necessary to provide State assistance to farmers to preserve

the agricultural sector of the economy in Western North Carolina and the economic stability of the region.

(11) Impacts on the environment have yet to be calculated. In addition to the stream damage from flooding, there was also contamination from sewage overflows and chemical spills. It was reported that over 100,000 gallons of petroleum products were spilled into the French Broad River system.

(12) Local governments have suffered loss of infrastructure, damage to public buildings, roads, wastewater treatment plants, and other facilities. One thousand four hundred and forty specific public assistance projects have been authorized to repair facilities and roads, remove debris, and otherwise effect cleanup and repair of local government facilities. In addition, the damage from the storms to property and businesses has eroded the tax base of the counties affected. These counties must bear a loss of revenue at the same time they are shouldering the costs of replacing and repairing the infrastructure and meeting the additional needs of the population struggling to recover from the effects of the hurricanes.

SECTION 2.(d) The General Assembly finds that as a result of the storms that hit Eastern North Carolina:

(1) A State Type I Disaster Declaration was issued for Dare and Hyde Counties after Hurricane Alex which provided individual assistance to 22 applicants who failed to qualify for SBA loans and substantial public assistance to the two counties for debris removal.

(2) Hurricanes Bonnie and Charlie impacted Beaufort, Bladen, Brunswick, Craven, Columbus, Dare, Duplin, Harnett, Hyde, Jones, Lenoir, New Hanover, Pamlico, Pasquotank, Pender, Pitt, Onslow, Tyrrell, and Washington Counties. A federal disaster declaration has been requested but denied. According to the Division of Emergency Management, 2,860 homes and 65 businesses were affected by the two hurricanes. Three hundred six of the affected homes were destroyed or suffered major damage.

(3) Hurricane Jeanne impacted Cabarrus, Moore, Rowan, and Stokes Counties. Reports from Moore County indicated that over 100 homes and businesses were damaged, primarily in Southern Pines. Public Assistance needs were limited to Stokes and Moore Counties.

(4) In addition to the damage reports for individuals and local governments, the North Carolina Department of Agriculture and Consumer Services reported early estimates of over 900,000 acres of corn, soybeans, tobacco, cotton, peanuts, and fruits and vegetables were lost as a result of Hurricane Charlie and Hurricane Bonnie.

SECTION 2.(e) The General Assembly further finds that the devastation caused by the 2004 hurricanes in North Carolina continues to affect all aspects of the economy, the environment, public health and safety, infrastructure, public and private institutions, and the general welfare of the counties affected and, indirectly, of the entire State. Immediate short-term responses and long-term responses are necessary to preserve a way of life in those North Carolina counties, to preserve the economic condition of the entire State, and to preserve the reputation North Carolina has, nationally and internationally, as a great place to live and a great place to do business.

CRITICAL NEEDS NOT MET BY EXISTING STATE AND FEDERAL PROGRAMS AND FUNDS

SECTION 2.1.(a) The General Assembly finds that State and federal disaster relief initiatives are not intended to make individuals whole after a loss; they are intended to assist the affected areas in recovering from the damage caused by the six hurricanes that struck North Carolina.

Without significant additional State assistance to the area damaged by Hurricanes Alex, Bonnie, Charlie, Frances, Ivan, and Jeanne, further deterioration of the economy, the environment, public health and safety, and quality of life in the State is likely to occur. Without additional State assistance:

(1) Many people in uninsured, damaged homes will either not qualify for federal housing assistance or not have the resources to take advantage of federal housing assistance.

(2) Local governments already overwhelmed with storm-related expenses may not have the resources to repair damaged infrastructure and provide the new infrastructure necessary for families relocating out of the flood and landslide zones and for businesses that are in the process of rebuilding.

(3) Jobs may be permanently lost because many cannot qualify for Small Business Administration loans.

(4) Many farmers who suffered significant losses may find it difficult to continue farming.

(5) Resources for drinking water protection, solid waste cleanup, hazardous waste cleanup, and remediation of high-risk storage tanks will be inadequate.

(6) The tourism industry will continue to suffer due to negative publicity about the storm.

SECTION 2.1.(b) It is the intent of the General Assembly that the benefits of the projects and programs authorized by this act are for the common good and collective recovery of the people of this State following a devastating natural disaster directly affecting a large portion of the State and indirectly affecting the entire State. The entire State faces a major loss if the counties that bore the major impact of the hurricanes and tropical storms of 2004 are not offered the assistance provided by this act. The purpose of this act is to provide an ultimate net public benefit to the State through a successful hurricane recovery initiative in Western North Carolina and other affected counties.

PART III. SCOPE OF ACT

COUNTIES COVERED BY THIS ACT

SECTION 3. Sections 2 through 5.2 of this act apply as follows:

(1) This act applies to the 19 counties designated by the Federal Emergency Management Agency (FEMA) as eligible for Individual Assistance and Public Assistance as a result of damages sustained from Hurricane Frances or Ivan. Those counties are eligible for all programs and assistance provided under this act. Those counties are: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.

(2) This act applies to the additional 26 counties that were designated by FEMA as eligible only for individual assistance as a result of damages sustained from Hurricane Frances or Ivan. Those counties are eligible for all programs and assistance provided under this act for individual assistance. Those counties are: Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Robeson, Rockingham, Rutherford, Scotland, Stokes, Union, and Wilkes.

(3) In addition, a number of counties were not included in a federal disaster declaration but were included in a State disaster declaration issued under Article 1 of Chapter 166A of the General Statutes as a result of the damages sustained by one of the hurricanes that occurred in 2004. The Governor shall also extend the coverage of the programs and assistance provided under this act to those counties.

PART IV. THE DISASTER RELIEF RESERVE FUND

ESTABLISHMENT OF THE DISASTER RELIEF RESERVE FUND

SECTION 4. The Governor has established the Disaster Relief Reserve Fund in the Office of State Budget and Management. The purpose of this fund is to provide necessary and appropriate relief and assistance from the effects of natural disasters. Consistent with the provisions of this act, the Governor shall spend monies appropriated to or otherwise transferred to the Disaster Relief Fund by this act to assist the counties referenced in Section 3 of this act. The monies shall be used to implement programs as provided by this act.

APPROPRIATION TO THE DISASTER RELIEF RESERVE FUND AND COMMITTEE REPORT

SECTION 4.1.(a) The appropriation made in this section is for the maximum amount necessary to implement this act. Savings shall be effected where the total amount appropriated is not required to implement the act.

SECTION 4.1.(b) The fund availability upon which appropriations in this act are based is as follows:

Estimated unappropriated General Fund over collections, fiscal year 2004-2005	$0.0
Estimated General Fund reversions, fiscal year 2004-2005	$91.0 million
North Carolina Community Development Initiative, Inc. – Reversion of unused Hurricane Floyd Recovery funds to the General Fund	$3.0 million
Savings Reserve Account balance, February 15, 2005	$267.0 million

SECTION 4.1.(c) Of the funds allocated to the North Carolina Community Development Initiative, Inc., for Hurricane Floyd Recovery programs pursuant to S.L. 1999-463 Extra Session, the sum of three million dollars ($3,000,000) in unused grant and loan funds for home relocation and repairs shall revert to the General Fund.

SECTION 4.1.(d) The Governor shall transfer from unexpended General Fund appropriations for fiscal year 2004-2005 to the Office of State Budget and Management, Disaster Relief Reserve Fund, the sum of ninety-one million dollars ($91,000,000) which shall be used to aid the counties referenced in Section 3 of this act in their efforts to recover from the effects of the 2004 hurricanes. The funds shall be used for the purposes set out in Part V, Part VI, and Part VII of this act. These funds

shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds.

SECTION 4.1.(e) There is appropriated from the General Fund to the Office of State Budget and Management, Disaster Relief Reserve Fund, the sum of three million dollars ($3,000,000) for the 2004-2005 fiscal year to aid the counties referenced in Section 3 of this act in their efforts to recover from the effects of the 2004 hurricanes. The funds shall be used for the purposes set out in Part V, Part VI, and Part VII of this act. These funds shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds.

SECTION 4.1.(f) There is appropriated from the Savings Reserve Account to the Office of State Budget and Management, Disaster Relief Reserve Fund, the sum of one hundred twenty-three million five hundred forty-one thousand four hundred forty-seven dollars ($123,541,447) for the 2004-2005 fiscal year to aid the counties referenced in Section 3 of this act in their efforts to recover from the effects of the hurricanes of 2004. The funds shall be used for the purposes set forth in Part V, Part VI, and Part VII of this act. The funds appropriated by this section shall be transferred to the Disaster Relief Reserve Fund and shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds.

SECTION 4.1.(g) The allocation of funds in the Report of the House Appropriations Committee on The Hurricane Recovery Act of 2005, dated February 17, 2005, are intended as guidance for the Governor. Notwithstanding the provisions of Section 5.1 of this act, if the Governor determines in accordance with Chapter 166A of the General Statutes that allocations should be made to programs other than those set forth in the Committee Report or that reallocations should be made among programs set forth in the Committee Report, the Governor may make the changes except as funds are otherwise specifically allocated by this act. The Governor shall report to the Joint Legislative Commission on Governmental Operations before implementing any changes in the allocations.

SECTION 4.1.(h) The Governor shall, to the extent practicable, ensure that assistance to victims provided from the Disaster Relief Reserve Fund is prioritized towards those areas and individuals least able to afford the losses as a result of the hurricanes of 2004.

PART V. IMPLEMENTATION OF ACT

DIRECTIVE TO REESTABLISH AND MODIFY, AS NECESSARY, RELIEF PROGRAMS DEVELOPED AFTER HURRICANE FLOYD, ESTABLISH NEW PROGRAMS, AND EXPAND OR MODIFY EXISTING PROGRAMS TO IMPLEMENT THIS ACT

SECTION 5. The General Assembly finds that the relief efforts and programs implemented after Hurricane Floyd hit Eastern North Carolina were critical in assisting Eastern North Carolina's recovery. The General Assembly further finds that the recovery of Eastern North Carolina has provided statewide benefits. It is the intent of the General Assembly to provide the same type of support and assistance to the counties affected by the 2004 hurricanes and tropical storms.

SECTION 5.1.(a) The Governor shall reestablish and may modify, as necessary, all of the programs implemented as part of the Hurricane Floyd Recovery Act of 1999 under S.L. 1999-463 Extra Session and the Report of the House Appropriations Committee on Hurricane Floyd Recovery dated December 15, 1999, as

amended by S.L. 1999-463 Extra Session. The Governor shall also establish new programs and expand or modify, as necessary, existing programs to provide necessary and appropriate relief and assistance from the effects of the hurricanes that hit the State in 2004.

SECTION 5.1.(b) The Governor shall modify the State Hazard Mitigation Grant Program to provide housing buyout and relocation assistance for those persons whose homes were destroyed or severely damaged by debris flows or whose homes are located in a landslide zone.

SECTION 5.1.(c) The Department of Crime Control and Public Safety shall modify the Crisis Housing Assistance Fund (CHAF) to provide money to persons who do not qualify for CHAF assistance solely because they failed to apply for federal assistance through the Small Business Administration's (SBA) Real Property Disaster loan program. The Department shall review these persons' applications for CHAF assistance using the same criteria employed by the SBA to determine eligibility for an SBA Real Property Disaster loan. The applicants shall be eligible for CHAF assistance if it is determined that they would have failed to qualify for assistance under the SBA Real Property disaster loan criteria and that they otherwise meet the criteria for CHAF.

SECTION 5.1.(d) The Governor shall expend funds appropriated to or otherwise transferred to the Disaster Relief Reserve Fund by this act to provide for the following programs and activities:

(1) Required matching funds for federal funds for disaster relief.

(2) Crisis housing assistance, which may include, but shall not be limited to, direct housing assistance to homeowners and renters, grants to local governments for water, sewer, and other infrastructure needs for housing in new areas, predevelopment activities, housing counselors, and housing recovery efforts. It is the intent of the General Assembly that housing assistance includes providing renters with assistance to purchase affordable housing. The General Assembly therefore encourages the Governor to use funds appropriated in this act to implement a program that provides assistance to renters in affected areas to purchase affordable housing (preferably permanent homes and not manufactured housing) by providing State resources, including grants and low-interest loans, for that purpose.

(3) Economic recovery assistance, including, but not limited to, assistance to the agriculture, aquaculture, forestry, commercial, and industrial sectors of the economy which may include, but shall not be limited to, grants and loans to businesses, grants and loans to farmers, and grants and loans for aquaculture.

(4) Public health, public safety, social services, and environmental restoration measures that may include, but shall not be limited to, drinking water protection, water quality monitoring, solid waste and hazardous waste cleanup, assessment and remediation of high-risk storage tank sites, and emergency and maintenance dredging.

(5) Support to local governments, by grants for public infrastructure, for the repair, renovation, and relocation of facilities, and to offset revenue losses resulting from storm damage from natural disasters covered by federal disaster declarations as to any storm between August 1, 2004, and the date this act becomes law. The amount of the grants shall be based on loss of taxable property in the jurisdiction.

(6) Mapping and studies authorized by this act.

SECTION 5.1.(e) Of the funds appropriated by this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of four million five hundred thousand dollars ($4,500,000) shall be allocated to the Town of Canton as a grant to repair and upgrade the flood levees, flood gates and pumps, for levee penetration mitigation, erosion control, elevating electrical controls, and repairing sewer lines for the purpose of protecting the wastewater treatment plant owned by Blue Ridge Paper Products and used by the Town of Canton.

SECTION 5.1.(f) Notwithstanding Part III and Part IV of this act, of the funds allocated by this act to local governments for repairs and renovations to public facilities damaged by the storms, the sum of eight million dollars ($8,000,000) shall be allocated to Hyde County for the 2004-2005 fiscal year to be used for the reconstruction of the Hyde County Courthouse and repair of other county buildings in the Courthouse Annex that were damaged as a result of Hurricane Isabel in 2003.

SECTION 5.1.(g) Of the funds appropriated by this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of five million dollars ($5,000,000) shall be allocated to the Rural Economic Development Center to be used for economic infrastructure through the Small Town Building Reuse and Restoration Program established in S.L. 2004-88. The funds allocated by this subsection shall be used to provide grants to local governments in counties covered under this act for economic recovery and redevelopment activities in business areas that sustained storm damage. These activities may include all of the following:

(1) Grants to repair public and private buildings damaged by flooding and deemed necessary to retain existing businesses or provide for new businesses.
(2) Repairs and improvements to public infrastructure.
(3) Other technical and design assistance to redevelop business properties and business areas.

Recipients shall certify that assistance received under this subsection does not duplicate other State or federal assistance or replace insurance proceeds.

SECTION 5.1.(h) Of the funds appropriated by this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of three million dollars ($3,000,000) shall be allocated to the North Carolina Community Development Initiative, Inc., to be used for housing programs and assistance.

SECTION 5.1.(i) Of the funds appropriated in this act to the Disaster Relief Reserve Fund for the 2004-2005 fiscal year, the sum of five hundred thousand dollars ($500,000) may be allocated to the Department of Environment and Natural Resources, Division of Forest Resources, for the purposes of forestland restoration and fire prevention activities needed due to hurricane damage.

AUTHORIZATION TO TRANSFER FUNDS TO FEDERAL AGENCIES AND TO LOCAL GOVERNMENTS

SECTION 5.2. The Governor may:

(1) Use funds from the Disaster Relief Reserve Fund to match federal funds in accordance with this act.
(2) Provide grants to local governments in accordance with this act.
(3) Transfer funds to local governments pursuant to cooperative agreements under which they administer programs or provide services on behalf of the State.

(4) Transfer funds to federal agencies pursuant to cooperative agreements under which they administer agriculture programs or provide services on behalf of the State.

AUTHORIZATION TO ESTABLISH TIME-LIMITED POSITIONS TO IMPLEMENT THIS ACT

SECTION 5.3. The Governor may establish part-time and full-time personnel positions to implement this act. All such positions shall be time-limited and shall be exempt from the State Personnel Act.

SUBROGATION BY STATE OF RIGHT TO INSURANCE COVERAGE FOR DAMAGED HOMES PURCHASED OR RELOCATED UNDER THE HAZARD MITIGATION GRANT PROGRAM

SECTION 5.4. If a person's home is relocated or purchased under the Hazard Mitigation Grant Program, or through the State Acquisition and Relocation Fund, the Disaster Relief Reserve Fund is subrogated to the person's rights under any insurance coverage for the damage to the home, and any monies received from the insurance coverage shall be paid to the Disaster Relief Reserve Fund.

AUTHORIZATION TO ESTABLISH ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS

SECTION 5.5. The Governor shall establish advisory councils to advise relevant State agencies on hurricane relief and recovery efforts and to ensure input from representatives of affected communities and groups.

TAX EXEMPTION

SECTION 5.6. Each agency disbursing funds or property under this act from the Disaster Relief Reserve Fund for hurricane relief or assistance, other than payments for goods or services provided by the recipient, shall include with the disbursement a written statement of the State and federal income tax treatment of the funds or property disbursed.

SECTION 5.7.(a) G.S. 105-134.6(b) is amended by adding the following new subdivision to read:

"(18) The amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer."

SECTION 5.7.(b) G.S. 105-130.5(b) is amended by adding the following new subdivision to read:

"(22) To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer."

SECTION 5.7.(c) This section is effective for taxable years beginning on or after January 1, 2004.

INVOLVEMENT OF HISTORICALLY UNDERUTILIZED BUSINESSES

SECTION 5.8. It is the intent of the General Assembly that, during this time of rebuilding and hurricane relief efforts, each State agency should strive to increase the total amount of goods and services acquired by it from historically underutilized business vendors, whether directly as principal contractors or indirectly as subcontractors or otherwise.

LEGISLATIVE REVIEW OF FEDERAL FUNDING AND REMAINING UNMET NEEDS

SECTION 5.9. It is the intent of the General Assembly to review in 2005 and 2006 the funds appropriated by Congress and to consider actions needed to address any remaining unmet needs, especially in the area of economic recovery.

LIMITATION ON USE OF STATE FUNDS

SECTION 5.10.(a) No State funds used to implement this act, including any funds in the Disaster Relief Reserve Fund, may be expended for the construction of any new residence within the 100-year floodplain unless the construction is in an area regulated by a unit of local government pursuant to a floodplain management ordinance, and the construction complies with the ordinance. As used in this section, "100-year floodplain" means any area subject to inundation by a 100-year flood, as indicated on the most recent Flood Insurance Rate Map prepared by the Federal Emergency Management Agency under the National Flood Insurance Program.

SECTION 5.10.(b) Homeowners in the 100-year floodplain who receive homeowner's housing assistance pursuant to this act shall have in effect federal flood insurance, if available, as a precondition to receipt of State homeowner's housing assistance for losses resulting from future flooding.

SECTION 5.10.(c) Funds loaned to small and mid-sized businesses shall be used only for eligible purposes under the Small Business Administration disaster loan assistance program. Payments for economic losses shall be limited to documented business expenses necessary for the continued operation of the business.

PART VI. MAPPING OF FLOOD PLAINS AND LANDSLIDE ZONES

SECTION 6. The Department of Crime Control and Public Safety shall proceed immediately to update Flood Insurance Rate Maps for all of the counties included in federal disaster declarations for Hurricanes Frances and Ivan. The Department of Environment and Natural Resources, in cooperation with the Department of Crime Control and Public Safety, shall act to ensure that (i) streambed maps and (ii) maps indicating areas vulnerable to landslides are made available for the same multicounty area. Streambed maps shall be annotated to show areas of significant actual or potential stream bank erosion.

PART VII. STUDY PREVENTIVE AND PROTECTIVE MEASURES THAT MAY PREVENT OR MITIGATE POTENTIAL FLOODING IN CERTAIN AREAS AND FUNDING TO IMPLEMENT THE STUDY AND ITS FINDINGS

SECTION 7.(a) The Department of Environment and Natural Resources shall study the causes of the flooding in Canton, Biltmore Village, the City of Newland, Clyde, and other affected areas as deemed necessary to determine what measures can be taken to prevent or mitigate the flooding potential in those areas. The Department may request the assistance of the Army Corps of Engineers in this study. The Department of

Environment and Natural Resources shall report its findings to the 2005 General Assembly, 2006 Regular Session.

SECTION 7.(b) Of the funds appropriated by this act to the Disaster Relief Reserve Fund an amount of up to three million dollars ($3,000,000) shall be transferred by the Office of State Budget and Management to the Department of Environment and Natural Resources to conduct the study. The funds shall be transferred upon the request of the Secretary of Environment and Natural Resources.

SECTION 7.(c) In accordance with G.S. 143-15.3, the General Assembly authorizes the Director of the Budget to transfer up to thirty million dollars ($30,000,000) from the Savings Reserve Account to the Office of State Budget and Management, Disaster Relief Reserve Fund, to implement the recommendations of the studies authorized in this section. Prior to the transfer of funds under this subsection, the Governor shall consult with the Joint Legislative Commission on Governmental Operations on his plans to implement any recommendations for flood remediation and mitigation including anticipated expenditures. Funds to be transferred pursuant to this subsection are appropriated from the Savings Reserve Account for the fiscal year in which the consultation is made to implement this subsection.

PART VIII. MAINTAIN REDEVELOPMENT CENTER

SECTION 8. The Governor has established a redevelopment center in Western North Carolina. The Governor shall maintain that redevelopment center for the entire period required to implement the provisions of this act.

PART IX. REPORTING REQUIREMENTS

SECTION 9. The Governor shall report to the Appropriations Committees of the Senate and the House of Representatives regarding the implementation of this act no later than 30 days after the date this act becomes law and shall report monthly thereafter until the adjournment of the 2005 Regular Session. The Governor shall report on the implementation of this act to the Joint Legislative Commission on Governmental Operations by October 15, 2005, and quarterly thereafter.

PART X. EFFECTIVE DATE

SECTION 10. This act is effective when it becomes law, except that Section 5.7 of this act is effective for taxable years beginning on or after January 1, 2004.

In the General Assembly read three times and ratified this the 24th day of February, 2005.

Became law upon approval of the Governor at 12:29 p.m. on the 25th day of February, 2005.

S.B. 133 **Session Law 2005-2**

AN ACT TO RESTATE AND RECONFIRM THE INTENT OF THE GENERAL ASSEMBLY WITH REGARD TO PROVISIONAL VOTING IN 2004; AND TO SEEK THE RECOMMENDATIONS OF THE STATE BOARD OF ELECTIONS ON FUTURE ADMINISTRATION OF OUT-OF-PRECINCT PROVISIONAL VOTING.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly makes the following findings:

(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The "jurisdiction" in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

(2) In S.L. 2003-226, the General Assembly expressly stated its intent to "ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in" HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner

that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters "not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote." The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of "Unreported Move[s] to Another Precinct Within the County." Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ("early voting") period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of

one-stop absentee ("early") voting prior to the General Election of 2004.

(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

(10) The General Assembly notes that in addition to provisional voting on the date of the General Election pursuant to G.S. 163-166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

a. Civilian absentee voting by mail, G.S. 163-226.
b. Military and overseas citizens absentee voting, G.S. 163-245.
c. One-stop absentee (early) voting, G.S. 163-227.2.
d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163-128.
e. Temporarily voting in an adjacent precinct, G.S. 163-128.
f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163-130.1.
g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of Owens v. Chaplin, 228 N.C. 705 (1948) using the following language:

> "We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them."

See also Appeal of Judicial Review by Republican Candidates for Election in Clay County, 45 N.C. App. 556 (1980).

The General Assembly endorses and reaffirms this fundamental principle.

(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act.

SECTION 2. G.S. 163-55 reads as rewritten:

"§ **163-55. Qualifications to vote; exclusion from electoral franchise.**

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct, ward, or other election district in which ~~he~~ the person offers to ~~register and~~ vote for 30 days next preceding ~~the ensuing~~ an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to ~~register and~~ vote in ~~the precinct in which he resides:~~ any election held in this State. ~~Provided, that removal~~ Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after ~~his~~ the person's removal.

~~The~~ Except as provided in G.S. 163-59, the following classes of persons shall not be allowed to ~~register or~~ vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts and Election Districts. – For purposes of qualification to vote in an election, a person's residence in a precinct, ward, or election district shall be determined in accordance with G.S. 163-57. When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices."

SECTION 3. G.S. 163-82.15(e) reads as rewritten:

"(e) Unreported Move to Another Precinct Within the County. – If a registrant has moved from an address in one precinct to an address in another precinct within the same

county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections. Any voter subject to this subsection may instead vote a provisional ballot according to the provisions of G.S. 163-166.11."

SECTION 4. G.S. 163-166.11 reads as rewritten:

"§ **163-166.11. Provisional voting requirements.**

If an individual seeking to vote claims to be a registered voter in a jurisdiction as provided in G.S. 163-82.1 and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163-82.1 in which the individual seeks to vote and is eligible to vote in that election.

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote."

SECTION 5. G.S. 163-182.2(a)(4) reads as rewritten:

"(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an

individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163-82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote."

SECTION 6. The State Board of Elections shall make recommendations by April 15, 2005, for consideration by the 2005 General Assembly on administration of provisional voting in the future, taking into account the relevant experience in the 2004 elections in this and other states.

SECTION 7. This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163-166.11.

In the General Assembly read three times and ratified this the 1st day of March, 2005.

Became law upon approval of the Governor at 12:14 p.m. on the 2nd day of March, 2005.

S.B. 82 **Session Law 2005-3**

AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

Whereas, Article II, Section 20 of the Constitution provides that each house shall be the judge of the qualifications and elections of its members; and

Whereas, the current statutory procedures for handling contested legislative elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

Whereas, Article VI, Section 5 of the Constitution provides that a contested election for Governor, Lieutenant Governor, or other Council of State member shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law; and

Whereas, the constitutional provision on contested executive branch elections was originally enacted in 1835, with the statutory implementing language enacted in 1836; and

Whereas, at the time of their repeal in 1971, those statutory procedures merely referred to the antiquated procedure for contested legislative elections; and

Whereas, it is necessary to revise the antiquated legislative election contest procedure and enact an executive election contest procedure as required by the Constitution; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-10 and G.S. 120-11 are repealed.

SECTION 2. Article 3 of Chapter 120 is amended by adding the following new sections to read:

"**§ 120-10.1. Contesting a seat.**

Except as otherwise provided by rules of the house, a contest of the qualifications as a candidate or election of a member of the House of Representatives or the Senate under Article II, Section 20 of the Constitution shall be conducted in accordance with the provisions of this Article.

"**§ 120-10.2. Definitions.**

As used in this Article, the following terms mean:

(1) Clerk. – The Principal Clerk of the house in which the election of the seat is being contested.

(2) Committee. – The Committee on Rules of the appropriate house unless, by rule, the house has designated another committee to hear contests.

(3) Contest. – A challenge to the apparent election of a member of the General Assembly or a request to determine an undecided election to a seat of the General Assembly in accordance with the provisions of this Article.

(4) Contestant. – An unsuccessful candidate in an election to which this Article applies who initiates a contest.

(5) Contestee. – A candidate in an election to which this Article applies who is not a contestant.

(6) Notice of intent. – The notice required to initiate a contest in accordance with the provisions of this Article.

(7) Unsuccessful candidate. – A candidate for an elective office to which this Article applies who has not been issued a certificate of election.

"**§ 120-10.3. Initiating a contest.**

(a) Who May Initiate. – A contest may be initiated only by a contestant by the filing of a written notice of the intent to petition for a contest in accordance with this section.

(b) When May Initiate. – The notice of intent may be filed no earlier than the date provided in G.S. 163-182.5 for the canvass by the board of elections with jurisdiction for the office under G.S. 163-182.4. The notice of intent must be filed no later than the latter of: (i) 10 days after a certificate of election has been issued, or (ii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes, but in no event may a contestant initiate a contest later than 30 days after the convening of a regular or special session of the General Assembly next after the election.

(c) Content of Notice. – A notice of intent shall state the grounds for the contest. The grounds shall be either or both of the following:

(1) Objections to the eligibility or qualifications of the contestee as a candidate in the election based on specific allegations.

(2) Objections to the conduct or results of the election accompanied by specific allegations that if proven true would have a probable impact on the outcome of the election.

The notice of intent shall also state that a contestee shall file an answer to the notice of intent in accordance with G.S. 120-10.4. The notice of intent shall be signed by the contestant and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure.

"§ **120-10.4. Answering a notice of intent.**

Within 10 days after service of the notice of intent on a contestee, a contestee shall file a written answer with the clerk. The contestee's answer shall admit or deny the allegations on which the contestant relies, or state that the contestee has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which the contestee relies and any different or additional issues the contestee wants considered. The answer shall be signed by the contestee and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure. The failure to file an answer shall be deemed to be a general denial of the allegations.

"§ **120-10.5. Filings and service.**

The notice of intent to contest shall be filed by the contestant with the clerk and copies thereof served by the contestant on the contestee as provided under Rule 4(j)(1) of the Rules of Civil Procedure. Proof of service shall be filed with the clerk in accordance with G.S. 1-75.10. The answer, petition, and any reply and copies thereof shall be filed with the clerk, and copies shall be served on the opposing party or the opposing party's counsel, if any, in the manner prescribed by Rule 5 of the Rules of Civil Procedure.

"§ **120-10.6. Discovery.**

(a) Depositions. – After service of the notice of intent, any party, after five days notice to the other party or parties may take depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with the contestant's petition at any time within 20 days following the date of service of the notice of intent, and a contestee shall complete the taking of the contestee's depositions within 30 days following the date of service of the notice of intent on the contestee. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions. Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings and file the same with the clerk.

(b) Witnesses. – Subpoenas for witnesses in a contest shall be issued upon the application of either party or upon motion of the committee under the same procedures as under Article 5A of this Chapter and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts.

"§ **120-10.7. Petitions.**

(a) Filing. – A written petition shall be filed by the contestant with the clerk within 40 days following the date of service of the notice of intent. The petition shall set forth the facts and arguments supporting the case of the contestant. A contestee may file a written reply to the petition within five days following its service on the contestee.

(b) Affidavits. – No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the clerk, pursuant to the written stipulation of the parties or their counsel, on or before the date established by G.S. 120-10.6 for the completion of the taking of depositions by the proponent of the affidavit.

"§ **120-10.8. Referral to committee.**

(a) Referral. – The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the committee, which documents shall constitute part of

the record in the contest. The committee shall hear the contest and conduct such investigation as has been directed by resolution of its house.

(b) Procedure. – The committee shall set a schedule for taking depositions and receiving affidavits. The committee may consider the contestant's and contestee's recommendations for the procedural schedule. The committee may hold hearings and may compel the attendance of witnesses and the production of documents in its inquiry in accordance with Article 5A of this Chapter. The committee may accept the filing of briefs. The committee may order the recount of the ballots in the election and may seek and obtain the assistance of the State Board of Elections in the interpretation and counting of ballots.

(c) Compel Discovery. – No witness in a contest shall be excused from discovering whether the witness voted in the election that is the subject of the contest or the witness's qualification to vote, except as to the witness's conviction for any offense which would disqualify the witness from voting. If the witness was not a qualified voter, the witness shall be compelled to discover for whom the witness voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted in the election.

(d) Report. – The committee shall report its findings as to the law and the facts and make recommendations to the house for its action.

"**§ 120-10.9. Basis for decision.**

(a) Eligibility and Qualification. – If the contest is as to the eligibility or qualifications of the contestee, the house shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(b) Conduct or Results of Election. – If the contest is as to the conduct or results of the election, the house shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall seat that person as a member of the house. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief, as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 163-182.8 shall apply.

"**§ 120-10.10. Jurisdiction.**

A contest of any election held at the same time and place as members of the General Assembly are elected shall be considered by the newly elected house. Any other contest shall be heard by the house sitting at the time of the election.

"**§ 120-10.11. Judicial proceedings abated.**

Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent.

"**§ 120-10.12. Determination house not reviewable.**

The decision of one of the houses of the General Assembly in determining a contest pursuant to this Article may not be reviewed by the General Court of Justice.

"**§ 120-10.13. Bad faith costs assessed.**

The prevailing party in any contest may recover that party's costs incurred in conjunction with the contest in a civil action, upon a showing that the other party filed,

pursued, maintained, or defended the contest in bad faith and without substantial justification.

"**§ 120-10.14. Applicability.**

This Article applies only to a general or special election and does not apply to a primary or any other part of the nominating process."

SECTION 3.(a) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.13A. Contested elections for Council of State offices.**

(a) Application of Procedures. – A contested election for any elective office established by Article III of the Constitution shall be determined by joint ballot of both houses of the General Assembly under Article VI, Section 5 of the Constitution in accordance with the provisions of this section. Except as provided by this section, the provisions of Article 3 of Chapter 120 shall apply to contested elections under this section and shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, grounds, and relief except as provided in this section. All filings shall be with the Principal Clerk of the House of Representatives.

(b) Notice of Intent. – Notice of the intent to contest the election under this section shall be filed with the Principal Clerk of the House of Representatives as if it were a contested election for the House of Representatives as prescribed in Article 3 of Chapter 120.

(c) Jurisdiction. – When a contest arises out of the general election, the General Assembly elected at the same time shall hear and decide it. Any other contest shall be heard by the General Assembly sitting at the time of the election.

(d) Committee. – A contest filed under this section shall initially be heard before a select committee consisting of five Senators appointed by the President Pro Tempore and five Representatives appointed by the Speaker of the House of Representatives. Not more than three members of the Senate appointed by the President Pro Tempore shall be members of the same political party. Not more than three members of the House of Representatives appointed by the Speaker shall be members of the same political party. That committee shall have the same power as a committee under Article 3 of Chapter 120 and may adopt supplemental rules as necessary to govern its proceedings. The committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action.

(e) Final Determination. – The final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding. The vote shall be taken as provided by Article VI, Section 5 of the Constitution. In order to find for the contestant or contestee and order the contestant or contestee elected, the vote on the joint ballot must include the affirmative vote of a majority of the members of the General Assembly voting on the issue. The ballots shall be in writing and are subject to the provisions of G.S. 143-318.13(b).

(f) Basis for Decision. –

(1) If the contest is as to the eligibility or qualifications of the contestee, the General Assembly shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(2) If the contest is as to the conduct or results of the election, the General Assembly shall determine which candidate received the highest

number of votes. If it can determine which candidate received the highest number of votes, it shall declare that candidate to be elected. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 147-4 shall apply.

(g) Final Determination. – A copy of the final determination of the General Assembly under this section shall be filed with the Secretary of State and with the State Board of Elections.

(h) Copies. – The Principal Clerk of the House of Representatives shall make copies of any filings and transmit them to the Principal Clerk for the Senate.

(i) Applicability. – This section applies only to a general or special election and does not apply to the primary or any other part of the nominating process.

(j) Judicial Proceedings Abated. – Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent.

(k) General Assembly Determination Not Reviewable. – The decision of the General Assembly in determining the contest of the election pursuant to this section may not be reviewed by the General Court of Justice.

(l) Definition. – As used in this section, 'contest' means a challenge to the apparent election for any elective office established by Article III of the Constitution or to request the decision of an undecided election to any elective office established by Article III of the Constitution, where the challenge or the request is filed in accordance with the timing and procedures of this section."

SECTION 3.(b) For any election in 2004, notice of the intent to contest the election shall be filed within 10 days of this act becoming law, notwithstanding the deadlines established under subsection (a) of this section. Any notice, pleadings, or other papers, submitted by a person who could be eligible to be a contestant or contestee under this act, received by the House or Senate Principal Clerk prior to this act becoming law, shall be deemed to be a notice of intent under G.S. 120-10.3 or G.S. 163-182.13A, as applicable, and may be refiled within 10 days of this act becoming law, in the form and manner specified in G.S. 120-10.3 or G.S. 163-182.13A, as applicable, in order to comply with the provisions of this act.

SECTION 4. G.S. 163-182.14 reads as rewritten:

"§ **163-182.14. Appeal of a final decision to superior ~~court.~~court; appeal to the General Assembly or a house thereof.**

(a) Final Decision. – A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. – Except in the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, ~~A~~an aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

(c) Contests for General Assembly and Executive Branch Offices. – In the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an unsuccessful candidate has the right to appeal the final decision to the General Assembly in accordance with Article 3 of Chapter 120 and G.S. 163-182.13A, as appropriate.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless a contest of the election is initiated pursuant to Article 3 of Chapter 120 or G.S. 163-182.13A, as appropriate."

SECTION 5. G.S. 163-182.15 reads as rewritten:

"§ **163-182.15. Certificate of nomination or election, or certificate of the results of a referendum.**

(a) Issued by County Board of Elections. – In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the county board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued five days after the protest is dismissed or denied by the county board of elections, unless that decision has been appealed to the State Board of Elections.

(2) The certificate shall be issued 10 days after the final decision of the State Board, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-182.14.

(3) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(b) Issued by State Board of Elections. – In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-14.

(2) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(3) The certificate shall be issued immediately upon the filing of a copy of the determination of the General Assembly with the State Board of Elections in contested elections involving any elective office established by Article III of the Constitution.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(c) Copy to Secretary of State. – The State Board of Elections shall provide to the Secretary of State a copy of each certificate of nomination or election, or certificate of the results of a referendum, issued by it. The Secretary shall keep the certificates in a form readily accessible and useful to the public."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of March, 2005.

Became law upon approval of the Governor at 2:26 p.m. on the 10th day of March, 2005.

S.B. 41 **Session Law 2005-4**

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-80(a) reads as rewritten:

"(a) Definition. – As used in this section, ~~"area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.~~the term "provider" applies to an area authority/county program and any provider of mental health, developmental disability, and substance abuse services that is licensable under Article 2 of this Chapter."

SECTION 2. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by ~~an area authority~~ a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the

applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. ~~An area authority~~A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, ~~an area authority~~a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to the area authority the results of the national criminal history check.~~notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. ~~Area authorities~~Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of ~~an area authority~~a provider a State criminal history record check required by this section without the ~~area authority~~provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the ~~area authority.~~provider. All criminal history information received by the ~~area authority~~provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 3. G.S. 122C-80(c) reads as rewritten:

"(c) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the ~~area authority~~ provider shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the ~~area authority.~~ provider. If the ~~area authority~~ provider disqualifies an applicant after consideration of the relevant factors, then the ~~area authority~~ provider may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant."

SECTION 4. G.S. 122C-80(d) reads as rewritten:

"(d) Limited Immunity. – ~~An area authority~~ A provider and an officer or employee of ~~an area authority~~ a provider that, in good faith, complies with this section shall be immune from civil liability for:

(1) The failure of the ~~area authority~~ provider to employ an individual on the basis of information provided in the criminal history record check of the individual.

(2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

SECTION 5.(a) G.S. 122C-80(g) reads as rewritten:

"(g) Conditional Employment. – ~~An area authority~~ A provider may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The ~~area authority~~ provider shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The ~~area authority~~ provider shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment."

SECTION 5.(b) G.S. 114-19.10 reads as rewritten:

"§ **114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and ~~area mental health, developmental disabilities, and substance abuse services authorities.~~providers of mental health, developmental disabilities, and substance abuse services.**

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.

(3) Home care agencies licensed under Chapter 131E of the General Statutes.

(4) ~~Area mental health, developmental disabilities, and substance abuse services authorities~~ Providers licensed under Chapter 122C of the General Statutes, including a contract agency of ~~an area authority~~ a provider that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to ~~area mental health, developmental disabilities, and substance abuse services authorities~~ a provider in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau

of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00)."

SECTION 6. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 7. G.S. 131D-40(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of

Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 8. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to

conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the national criminal history check.~~as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 9. G.S. 131E-265(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or home care agency ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

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

In the General Assembly read three times and ratified this the 16th day of March, 2005.

Became law upon approval of the Governor at 7:20 p.m. on the 23rd day of March, 2005.

H.B. 218 **Session Law 2005-5**

AN ACT TO ALTER THE DISTRIBUTION OF THE NET PROCEEDS FROM THE SALE OF ALCOHOLIC BEVERAGES AT THE TOWN OF CLINTON ALCOHOLIC BEVERAGE CONTROL STORES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6 of Chapter 1191 of the 1957 Session Laws, as amended by Section 2 of the 1985 Session Laws, reads as rewritten:

"Sec. 6. Out of the gross profits derived from the operation of said Alcoholic Beverage Control Stores and after the payment of all costs and operating expenses, and after obtaining sufficient and proper working capital, the amount thereof to be determined by the Town of Clinton Board of Alcoholic Beverage Control, said board shall further expend an amount necessary for law enforcement purposes and the treatment and hospitalization of persons addicted to alcohol of not less than five per cent (5%) nor more than fifteen per cent (15%) thereof, to be determined by quarterly audits, which amount shall supplement and not supplant the amount usually budgeted for such purposes by the Town of Clinton. In the expenditure of said funds, the Town Board of Alcoholic Control shall employ one or more persons as law enforcement officer or officers to be appointed by and directly responsible to the said board. The person or persons so appointed shall, after taking the oath prescribed by law for peace officers, have the same powers and authorities within Sampson County as other peace officers. And any such person or persons so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such defendant therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officer or officers. Any law enforcement officer appointed by the said board of Alcoholic Control and any other peace officer are hereby authorized, upon request of the sheriff or other Lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition laws therein, and while so acting shall have such powers as a peace officer as are granted to him in Sampson County and be entitled to all the protection provided for said officer while acting in his own county. Nothing contained in this act shall prevent the City Board of Alcoholic Control from entering into a contract with the City of Clinton, in the manner set forth in G.S. 18B-501(f), and all provisions of G.S. 18B-501(f) are incorporated into this section.

Out of the net profits derived from the operation of said Alcoholic Beverage Control Stores, the Town of Clinton Board of Alcoholic Beverage Control, shall, on ~~a quarterly~~ an annual basis, pay over to the following named governing bodies, boards and agencies amounts equal to the percentages of the net profits which shall be expended by said governing bodies, boards and agencies for the following purposes and none other:

(a) Twenty per cent (20%) to the Clinton City Board of Education as a supplement to the current expense fund, including supplements to teachers' salaries. Such amount shall supplement and not supplant the amount normally budgeted by the

City Board of Education and the Board of County Commissioners of Sampson County for such purposes.

(b) ~~Twenty per cent (20%) to the Board of Trustees of the Sampson County Memorial Hospital Incorporated.~~

~~(c) Five per cent (5%) for industrial and commercial development of the Town of Clinton and its vicinity and for this purpose the Board of Control may make direct grants to any nonprofit organization for said purposes, may expend said fund directly for said purposes or may accumulate said fund from year to year and expend said accumulated funds for said purposes at any time in its discretion. The word "vicinity" as used in this subparagraph shall be construed to mean any part of Sampson County.~~

~~(d) Fifty-five per cent (55%) to the general fund of the Town of Clinton, of which sum three percent (3%) shall be paid by said town to the Clinton Recreation Commission and two percent (2%) shall be expended by the board of commissioners of said town annually for the use and benefit of the Clinton Fire Department~~ Eighty per cent (80%) to the General Fund of the Town of Clinton."

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

In the General Assembly read three times and ratified this the 4th day of April, 2005.

Became law on the date it was ratified.

S.B. 179 **Session Law 2005-6**

AN ACT AUTHORIZING THE CITY OF LAURINBURG TO CONVEY CERTAIN PROPERTY AT A PRIVATE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Laurinburg may convey by private negotiation and sale, with or without monetary consideration, and upon such terms as the City Council deems appropriate, any or all of its right, title, and interest in the following described property:

Property Identification Number

010013 04002	010043 03050	010049 05058	010061 03011
010013 07001	010043 03063	010049 05059	010061 05008
010013 12009	010043 03065	010049 05060	010061 05032
010013 12016	010044 13011	010049 05061	010061 05034
010013 12019	010045 01001	010049 05062	010061 05069
010013 12020	010045 01003	010049 05063	010061 05073
010013 21016	010045 01016	010049 05064	010061 05077
010013 21019	010045 01017	010049 05065	010063 05043
010013 21020	010045 01028	010049 05069	010064 06017
010013 21021	010045 03004	010049 05070	010068 01006
010013 22011	010045 03005	010049 05071	0100680 1010
010013 28009	010045 03006	010049 05072	010068 02001
010013 28010	010046 01001	010049 05073	010068 02003
010013 28015	010046 08008	010049 05075	010068 02008
010013 29005	010046 08014	010049 05076	010068 02014
010013 30003	010048 01007	010049 05077	010068 02015
010013 36001	010048 01008	010049 05078	010068 03004
010013 36003	010048 01022	010049 05079	010068 0300901

010013 36007	010049 01007	010049 05080	010068 03013
010013 36008	010049 01008	010049 05081	010072 02007
010013 37009	010049 01009	010049 05082	010072 02011
010013 37010	010049 02015	010049 05083	010072 02014
010013A1700401	010049 02034	010049 06099	010072 02019
010013A17006	010049 02035	010049 06100	010072 02023
010013A17008	010049 03032	010049 06101	010072 05009
010013A18017	010049 04036	010049 06102	010076 02001
010013A26020	010049 04037	010049 06103	010076 02019
010030 02005	010049 04038	010050 01003	010076 02021
010030 03001	010049 04039	010058 01009	010076 03018
010030 04003	010049 04040	010058 01017	010076 04001
010030 06001	010049 04042	010058 01064	010076 04004
010035 0300401	010049 04043	010058 01086	010076 04005
010037 01029	010049 04044	010058 01087	010076 04006
010037 01033	010049 04045	010058 01161	010076 04007
010037 01035	010049 04046	010058 01175	010076 04008
010037 01039	010049 04047	010058 01184	010076 04009
010037 01082	010049 04048	010058 01186	010076 04011
010037 01083	010049 05049	010058 01188	010076 04012
010037 02040	010049 05050	010058 01191	010076 04014
010040 03012	010049 05051	010058 01192	010076 04017
010041 01003	010049 05052	010058 01193	010076 04018
010041 01007	010049 05053	010058 01195	010076 05006
010041 01033	010049 05054	010058 01200	010076 06012
010041 01034	010049 05055	010058 01231	010076 07001
010041 01045	010049 05056	010058 01259	010077 03001
010041 01046	010049 05057	010058 01282	010258 0101201
010043 03044			

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

In the General Assembly read three times and ratified this the 7th day of April, 2005.

Became law on the date it was ratified.

H.B. 857 **Session Law 2005-7**

AN ACT TO EXTEND THE DATE WHEN THE STATE PROPERTY OFFICE MUST SUBMIT A MASTER PLAN FOR THE USE OF THE DOROTHEA DIX PROPERTY TO THE DOROTHEA DIX HOSPITAL PROPERTY STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3.4.(a1) of S.L. 2003-314, as amended by Section 10.26A.(a) of S.L. 2004-124, reads as rewritten:

"**SECTION 3.4.(a1)** The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The

Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Property Study Commission no later than ~~April 1, 2005.~~ September 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2006 Session of the 2005 General Assembly.

In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Cochairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission."

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

In the General Assembly read three times and ratified this the 30th day of March, 2005.

Became law upon approval of the Governor at 2:07 p.m. on the 7th day of April, 2005.

S.B. 16 **Session Law 2005-8**

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of Tabor City: That certain parcel or tract of land lying and being in South Williams Township, Columbus County, North Carolina bounded on the southwest by NC Hwy. 904 and on all other sides by AMS Ventures LLC, et al. (DB 638 PG 478), and being more particularly described as follows: BEGINNING at a new iron rod, said rod being located S 45º37'17" E 144.02 feet from an existing railroad spike at the point of intersection of the centerline of NC Hwy. 904 and a small branch, said spike being the westernmost corner of Tract #9 as shown on a map entitled "Pine Lands Tree Farm" recorded in Map Book 6 Page 13, Columbus County Registry in the northeast right-of-way of NC Hwy. 904 and running thence as a new line leaving said right-of-way N 56º24'26" E 376.99 feet to a new iron rod; thence N 23º16'28" W passing over a new iron rod located 59.43 feet, a total distance of 63.95 feet to a point; thence N 66º43'32" E 1081.88 feet to a new iron rod; thence N 65º22'39" E 1059.74 feet to a new iron rod; thence S 30º17'50" E 1874.99 feet to a new iron rod; thence S 57º22'45" W 1755.00 feet to a new iron rod; thence N 36º33'50" W 502.00 feet to a new iron rod; thence S 56º21'09" W 462.91 feet to a new iron rod; thence S 50º50'36" W 148.90 feet to a new iron rod in the northeast right-of-way of NC Hwy. 904; thence as said right-of-way N 33º35'28" W 1651.78 feet to the BEGINNING, containing 107.95 acres, more or less, and being a portion of that tract described in Deed Book 638 Page 478, Columbus County Registry.

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

In the General Assembly read three times and ratified this the 18th day of April, 2005.

Became law on the date it was ratified.

H.B. 446 **Session Law 2005-9**

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CITY OF ROANOKE RAPIDS, TO ADD CERTAIN DESCRIBED TERRITORY TO THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE CITY OF ROANOKE RAPIDS, AND TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF WELDON.

The General Assembly of North Carolina enacts:

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

That certain tract or parcel of land lying and being situate in Halifax County, North Carolina, more particularly described as follows:

Beginning at the centerline intersection of Becker Drive Extended right-of-way and Interstate Highway 95 right-of-way, north of CSX Transportation Railway 80 foot right-of-way; thence along the centerline of Interstate Highway 95 right-of-way in a southerly direction to the run of "Chockoyotte Creek"; thence easterly along the run of "Chockoyotte Creek" to the northeast corner of property now or formerly belonging to James G. Wallace as described in Deed Book 650, Page 229, Halifax Public Registry, said corner being shown on plat recorded in Plat Book 8, Page 57, Halifax Public Registry; thence southwesterly along the east line of property now or formerly belonging to James G. Wallace to a corner common with property now or formerly belonging to Bessie Wallace Ausby and John Ausby described in Deed Book 701, Page 23, Halifax Public Registry; said corner being shown on plat recorded in Plat Book 8, page 57, Halifax Public Registry; thence southeasterly along the James G. Wallace and Ausby property line to the centerline of State Road 1600; thence along the centerline of State Road 1600 in a southerly direction to the centerline intersection of State Road 1600 and the run of "Holland Branch"; thence along the run of "Holland Branch" in a northwesterly direction, which is the boundary line between property now or formerly belonging to Edwin Branch and Luther Artis to a property corner common with property now or formerly belonging to Luther Artis, Edwin Branch and R.G. Bell; thence along the R.G. Bell boundary lines in a southerly, westerly and northerly direction the various course and distances as shown on plat of R.G. Bell property recorded in Plat Cabinet 2, Slide 97, Halifax Public Registry, to the northwest corner of the R.G. Bell tract in the southern line of property now or formerly belonging to Edwin Branch; thence westerly along the Edwin Branch line and property line of "Bounds Place Extended II" subdivision as shown on plat recorded in Plat Cabinet 5, Slide 76, Halifax Public Registry to the easterly property line of property now or formerly belonging to Robert W. Willey described in Deed Book 1425, page 390 Halifax Public Registry; thence along the east line of property now or formerly belonging to Robert W. Willey in a southerly direction to the centerline of NC Highway #125; thence in a northwesterly direction along the centerline of NC Highway #125 to the intersection of the western right of way line of Interstate Highway 95 and the centerline of NC Highway #125; thence in a northerly direction along the western right of way line of Interstate Highway 95 to the intersection of the western right of way line of Interstate Highway 95 with the centerline of Becker Drive Extended right of way, north of CSX Transportation Railway 80 foot right-of-way; thence along the centerline of Becker Drive Extended right-of-way in a easterly direction to the point and place of beginning.

Less and except from the above described tract or parcel of land a lot or parcel of land

now or formerly belonging to James G. Wallace bounded on the southeast by State Road 1600, on the southwest and northwest by property now or formerly belonging to James G. Wallace and on the northeast by property now or formerly belonging to Deborah Sneed; said lot or parcel of land being described as 1.29 Acre "Holt Land", with a parcel # of 1202355, by the Halifax County Tax Department; said lot or parcel of land being a portion of the property now or formerly belonging to James G. Wallace described in Deed Book 650, Page 229, Halifax Public Registry; said lot being a portion of Lot #1 as shown on plat recorded in Plat Book 8, Page 57, Halifax Public Registry.

SECTION 2. In addition to the areas allowed under Article 19 of Chapter 160A of the General Statutes, the City of Roanoke Rapids may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes in the following defined area:

That certain tract or parcel of land lying and being situate in Halifax County, North Carolina, more particularly described as follows:

Beginning at a point 1000 feet southwesterly and perpendicular from the centerline of NC Highway # 125 on the eastern right-of-way line of Interstate Highway 95; thence along a line 1000 feet parallel with NC Highway # 125 in a southeasterly direction to a point being the intersection with a line running 1000 feet parallel and easterly of State Road 1600, said point being south of "Days Crossroads"; thence in a northeasterly direction along the line 1000 feet southeasterly and parallel to State Road 1600 to the boundary line between property now or formerly belonging to W.D. Allen Heirs and Aubry N. Dickens, Jr., said point being east of the intersection of State Road 1600 and 1692; thence in a northwesterly direction along the boundary line between property now or formerly belonging to W.D. Allen Heirs and Aubry N. Dickens, Jr. to the centerline of State Road 1600; thence along the centerline of State Road 1600 in a southerly direction to the centerline intersection of State Road 1600 and the run of "Holland Branch"; thence along the run of "Holland Branch" in a northwesterly direction, which is the boundary line between property now or formerly belonging to Edwin Branch and Luther Artis, to a property corner common with property now or formerly belonging to Luther Artis, Edwin Branch and R.G. Bell; thence along the R.G. Bell boundary lines in a southerly, westerly and northerly direction the various course and distances as shown on plat of R. G. Bell property recorded in Plat Cabinet 2, Slide 97, Halifax Public Registry, to the northwest corner of the R.G. Bell tract in the southern line of property now or formerly belonging to Edwin Branch; thence westerly along the Edwin Branch line and property line of "Bounds Place Extended II" subdivision as shown on plat recorded in Plat Cabinet 5, Slide 76, Halifax Public Registry to the easterly property line of property now or formerly belonging to Robert W. Willey described in deed book 1425, page 390 Halifax Public Registry; thence along the east line of property now or formerly belonging to Robert W. Willey in a southerly direction to the centerline of NC Highway # 125; thence in a northwesterly direction along the centerline of NC Highway #125 to the intersection of the centerline of NC Highway # 125 with the eastern right-of-way line of Interstate Highway 95; thence along the eastern right-of-way line of Interstate Highway 95 in a southerly direction to the point and place of beginning.

SECTION 3. G.S. 160A-360(f) shall apply to the extension of jurisdiction provided by Section 2 of this act.

SECTION 4. The corporate limits of the Town of Weldon are extended to include the following described territory:

That certain tract or parcel of land, lying and being situate in Weldon Township, Halifax County, containing 13.892 Acres, and shown on that certain plat entitled "Plat Showing

Property Being Conveyed to Duquesne Energy, Inc. From Rightmyer Machine Rentals, Inc.", prepared by Timmons, dated January 13, 1998, and recorded in Plat Cabinet 6, Slide 22-T, Halifax Public Registry, and being more particularly bounded and described in accordance with said plat as follows: Commencing at a found monument located on the Eastern right of way of N. C. State Road No. 1734 and the Northern right of way line of N. C. State Road No. 1710, said monument being the true point and place of beginning; thence South 89° 47' 07" West, a distance of 20.07 feet to a found rod; thence along the Eastern right of way line of said State Road No. 1710, North 08° 21' 36" East, a distance of 658.24 feet to a found pipe; thence leaving said right of way line South 81° 31' 33" East, a distance of 400.10 feet to a found pipe; thence North 08° 27' 19" East, a distance of 257.86 feet to a found pipe; thence South 89° 46' 55" East, a distance of 357.26 feet to a found pipe; thence South 11° 21' 04" West, a distance of 967.55 feet to a found pipe; thence North 89° 42' 06" West, a distance of 690.50 feet to a found pipe; thence North 08° 15' 37" East, a distance of 100.17 feet to a found monument, said monument being the true point and place of beginning and containing 13.892 acres of land.

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

In the General Assembly read three times and ratified this the 19th day of April, 2005.

Became law on the date it was ratified.

H.B. 75 **Session Law 2005-10**

AN ACT AFFECTING THE REGULATION OF ABANDONED OR JUNKED MOTOR VEHICLES IN THE CITY OF HENDERSON AND THE TOWN OF LOUISBURG.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-303(b2) reads as rewritten:

"(b2) A junked motor vehicle is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) Is more than five years old and worth less than ~~one hundred dollars ($100.00);~~ five hundred dollars ($500.00); or

(4) Does not display a current license plate."

SECTION 2. G.S. 160A-303.2(a) reads as rewritten:

"(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than ~~one hundred dollars ($100.00).~~ five hundred dollars ($500.00)."

SECTION 3. Section 1 of this act applies only to the City of Henderson and the Town of Louisburg. Section 2 of this act applies only to the Town of Louisburg.

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

In the General Assembly read three times and ratified this the 20th day of April, 2005.

Became law on the date it was ratified.

S.B. 166 **Session Law 2005-11**

AN ACT TO AUTHORIZE THE TOWNS OF ELIZABETHTOWN, BLADENBORO, AND ROSE HILL TO REGULATE GOLF CARTS AND TO CLARIFY LAW ENFORCEMENT AUTHORITY FOR THE ENFORCEMENT OF LAWS RELATING TO MOTOR VEHICLES WITHIN THE SEVEN LAKES COMMUNITY IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the town.

By ordinance, a town may require the registration of golf carts, charge a fee for the registration, specify the persons authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

SECTION 2. Section 2 of Chapter 13 of the 1995 Session Laws, as amended by Session Law 2002-82, reads as rewritten:

"**Sec. 2.** This act is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Seven Lakes Landowners Association, ~~Inc.~~ Inc., or by any law enforcement officer acting within the officer's territorial jurisdiction."

SECTION 3. Section 1 of this act applies only to the Towns of Elizabethtown, Rose Hill and Bladenboro. Section 2 of this act applies only to Moore County.

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

In the General Assembly read three times and ratified this the 21st day of April, 2005.

Became law on the date it was ratified.

S.B. 332 **Session Law 2005-12**

AN ACT TO PERMIT THE CITY OF GREENSBORO TO DESIGNATE SOMEONE OTHER THAN THE CITY CLERK TO ISSUE CLOSING-OUT SALE LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2002-33 reads as rewritten:

"**SECTION 2.** This act applies to the ~~City of Charlotte~~ Cities of Charlotte and Greensboro only."

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

In the General Assembly read three times and ratified this the 21st day of April, 2005.

Became law on the date it was ratified.

H.B. 825 **Session Law 2005-13**

AN ACT TO INCREASE THE MEMBERSHIP OF THE TOWN OF KENANSVILLE ALCOHOLIC BEVERAGE CONTROL BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of Chapter 1169 of the 1949 Session Laws reads as rewritten:

"Sec. 4. If the operation of a town liquor control store is authorized under the provisions of this Act, the Mayor and the Board of Commissioners of the Town of Kenansville shall immediately create a city board of alcoholic control to be composed of a chairman and ~~two~~ four other members who shall be well-known for their character, ability, and business acumen. Said board shall be known and designated as "The Town of Kenansville Board of Alcoholic Control". The chairman of said board shall be designated by the mayor and governing body of the town and shall serve ~~for his~~ the first term for a period of ~~three years,~~ one year, and ~~one member~~ two members shall serve for ~~his~~ their first term a period of two years, and the other ~~member~~ members shall serve for a period of ~~one year;~~ three years; and all terms shall begin with the date of their appointment, and after the said terms shall have expired, their successors in office shall serve for a period of three years. Their successors, or any vacancy occurring in the board shall be named or filled by the mayor and the governing body of the town."

SECTION 2. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. – A local ABC board shall consist of ~~three~~ five members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman."

SECTION 3. Section 2 of this act applies to the Town of Kenansville only.

SECTION 4. The terms of members currently appointed to the board shall expire on December 31, 2005. All new appointments and reappointments to the board will be effective on January 1, 2006, and shall be for the terms specified in Section 1 of this act. In the event a member is removed or leaves the board for any reason, the new member appointed to the board shall fill the remainder of the unexpired term.

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

In the General Assembly read three times and ratified this the 25th day of April, 2005.

Became law on the date it was ratified.

H.B. 856 **Session Law 2005-14**

AN ACT TO INCREASE THE MEMBERSHIP OF THE CRAVEN COUNTY REGIONAL AIRPORT AUTHORITY AND TO CHANGE THE TERMS FROM TWO TO THREE YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Subsections 2(a) and 2(b) of Chapter 1197 of the Session Laws of 1979, as rewritten by Section 1 of Chapter 838 of the Session Laws of 1985, and as further rewritten by Section 1 of Chapter 1046 of the Session Laws of 1989, read as rewritten:

"(a) The Airport Authority shall consist of ~~five~~ eight voting members, all of whom shall be residents of Craven County. The Commanding General of the United States Marine Corps Air Station, Cherry Point, North Carolina, or the General's designee may serve as a nonvoting Honorary Member of the Authority.

(b) The Airport Authority shall consist of ~~five~~ eight members appointed by the Board of Commissioners of Craven County for ~~two~~ three year terms. ~~The initial terms shall commence July 1, 1986. Effective on or after July 1, 1990, the Craven County Board of Commissioners shall appoint two members to the Airport Authority for two-year terms, and three members to the Airport Authority for three-year terms. All terms shall expire on June 30 of the year of expiration. At the expiration of those terms, successors shall be appointed for two-year terms, and subsequent terms shall likewise be for two years.~~ All members serving on the Airport Authority as of the effective date of this act shall finish their two-year terms. Within 30 days after the effective date of this act, the Craven County Board of Commissioners shall appoint three new members to the Airport Authority; one new member shall serve a term that shall expire June 30, 2008, and two new members shall serve terms that shall expire June 30, 2007. All subsequent appointments shall be for terms of three years. All terms shall expire on June 30 of the year of expiration."

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

In the General Assembly read three times and ratified this the 25th day of April, 2005.

Became law on the date it was ratified.

H.B. 921 **Session Law 2005-15**

AN ACT TO AMEND THE CURRITUCK COUNTY DEER HUNTING LAW TO PROVIDE FOR THE TAKING OF EITHER SEX DEER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of Chapter 221 of the 1993 Session Laws reads as rewritten:

"Sec. 4. Notwithstanding any other provision of law, there is an open season for hunting or taking ~~antlered~~ deer of either sex with ~~shotguns no larger than 10 gauge~~ shotguns, bow and arrow, and muzzle-loading firearms in:

(1) That portion of Poplar Branch Township on the Outer Banks of Currituck County; and

(2) The U.S. Fish and Wildlife Service Swan Island and Monkey Island Refuge Areas on the Outer Banks of Currituck County;

~~from October 18, 1993, through January 1, 1994, and in subsequent years as~~ during the season established by the Wildlife Resources ~~Commission.~~ Commission and with bag limits established by the Commission."

SECTION 2. In 2005 only, the either sex deer season on the Outer Banks of Currituck County as established by Section 1 of this act shall coincide with the either sex deer season established for the rest of Currituck County by the Wildlife Resources Commission.

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

In the General Assembly read three times and ratified this the 25th day of April, 2005.

Became law on the date it was ratified.

H.B. 351 **Session Law 2005-16**

AN ACT TO MODIFY THE OCCUPANCY TAX FOR PASQUOTANK COUNTY AND ELIZABETH CITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 175 of the 1987 Session Laws reads as rewritten:

"**Section 1.** Pasquotank occupancy tax. (a) Authorization and Scope. The Pasquotank County Board of Commissioners ~~may, by resolution, after not less than 10 days' public notice and after a hearing held pursuant thereto,~~may levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental in Pasquotank County of any room, lodging, or similar accommodation subject to sales tax under G.S. ~~105-164.4(3).~~105-164.4(a)(3).

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

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Pasquotank County Board of Commissioners may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection.

Pasquotank County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Pasquotank County. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Pasquotank County Finance Officer shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted by him to the county a discount of three percent (3%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. ~~A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Use and Distribution of ~~Tax Revenue.~~First Three Cents (3¢). – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:

(1) Fifty percent (50%) to promote travel and tourism.

(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.

(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority. ~~After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 2 of this act, the county shall, on a quarterly basis, remit the net proceeds of the tax levied under this section to the City of Elizabeth City. The city may spend funds remitted to it under this subsection only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether under this section or Section 2 of this act, the county shall, on a quarterly basis, remit to the City of Elizabeth City one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the county. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~The county, or a town or city that receives revenue under this subsection may contract with a nonprofit organization to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~

(e1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

~~(f) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Pasquotank County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Sec. 1.1.** Elizabeth City Area Convention and Visitors Bureau. (a) Establishment as a Tourism Development Authority. – Upon adoption of a resolution levying a room occupancy tax under this act by either the Pasquotank County Board of Commissioners or the Elizabeth City City Council, the Pasquotank Board of Commissioners shall adopt a resolution converting the Elizabeth City Area Convention and Visitors Bureau into a tourism development authority, which shall be a public authority under the Local

Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all of the assets of the county's convention and visitors bureau. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county.

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

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

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body or bodies levying a tax under this act on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body or bodies may require.

"**Sec. 2.** Elizabeth City occupancy tax. (a) Authorization; Scope; Administration. – If the Pasquotank County Board of Commissioners has not levied the tax authorized by Section 1 of this act or has levied the tax at a rate of less than three percent (3%), the Elizabeth City City Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Pasquotank County occupancy tax rate, if any. This tax shall apply to the same accommodations that are taxable under Section 1 of this act. A tax levied under this subsection shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.~~act and shall be collected and administered in the same manner as the tax authorized by that section, unless this section specifies otherwise. In applying the provisions of Section 1 to a tax levied by the Elizabeth City City Council under this section, however, all references in Section 1 to Pasquotank County or an official of Pasquotank County shall be construed to mean the City of Elizabeth City and the city counterpart to the county official. Accordingly, the Elizabeth City Finance Officer shall collect an occupancy tax levied by the city.~~

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Elizabeth City City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section only if Elizabeth City also levies the tax authorized under subsection (a) of this section or if Pasquotank County levies the tax authorized under subsection (a) of Section 1 of this act. The total rate of tax levied under subsections (a) and (a1) of this section, when combined with the rate of any room occupancy tax that may be levied by Pasquotank County, may not exceed six percent (6%). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section.

(b) Use and Distribution of ~~Revenue. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall retain the proceeds of the tax levied under this section. After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this~~

~~act, whether pursuant to this section or Section 1 of this act, the city shall, on a quarterly basis, remit to Pasquotank County one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the city. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~ First Three Cents (3¢). – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:

(1) Fifty percent (50%) to promote travel and tourism.

(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.

(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority.

(b1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

"**Sec. 2.1.** Definitions. – The following definitions apply in this act:

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

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

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

"**Sec. 3.** Effect of county tax on previously levied city tax. If the City of Elizabeth City levies an occupancy tax under Section 2 of this act, and the Pasquotank County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Pasquotank County under Section 1 of this act, the occupancy tax levied by the City of Elizabeth City shall be repealed as of the effective date of the county levy if the county

levies an occupancy tax at the rate of ~~three percent (3%),~~ six percent (6%), and shall be reduced by the amount that the combined county and city occupancy tax rates exceed ~~three percent (3%)~~ six percent (6%) if the county rate is less than ~~three percent (3%).~~ six percent (6%).

"**Sec. 4.** This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

In the General Assembly read three times and ratified this the 26th day of April, 2005.

Became law on the date it was ratified.

S.B. 43 **Session Law 2005-17**

AN ACT AMENDING THE CHARTER OF THE CITY OF MONROE TO ALLOW THE CITY MANAGER TO HIRE THE CHIEF OF POLICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4.5 of the Charter of the City of Monroe, being S.L. 2000-35, is repealed.

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

In the General Assembly read three times and ratified this the 27th day of April, 2005.

Became law on the date it was ratified.

H.B. 1061 **Session Law 2005-18**

AN ACT TO CONVEY CERTAIN DESCRIBED PROPERTY TO THE COUNTY OF CURRITUCK.

The General Assembly of North Carolina enacts:

SECTION 1. Section 30.3F of S.L. 2004-124 reads as rewritten:

"**SECTION 30.3F.** The State of North Carolina shall convey to Currituck County, for consideration of ~~one dollar ($1.00),~~ forty thousand one dollars ($40,001), which includes forty thousand dollars ($40,000) for the legal expenses of the State, title in fee simple absolute with no restrictions or covenants to ~~the land on which the Currituck County Airport is situated~~ all of that certain tract or parcel of land situate, lying and

being in Crawford Township, Currituck County, North Carolina, and being more particularly described as follows:

TRACT I: Beginning at a point marked by a concrete marker, said point being located approximately South 76 degrees 30' East and approximately 1500 feet from the intersection of State Road No. 1246 with said Highway No. 158; running thence South 31 degrees 52' West 927.5 feet to a point; running thence North 26 degrees 36" West 49 feet to a point; running thence North 26 degrees 36' West 233.0 feet to a point; running thence North 29 degrees 01' West 233.3 feet to a point; running thence North 20 degrees 51' West 410.9 feet to a point; running thence North 21 degrees 21' West 383.6 feet to a point; running thence South 74 degrees 22' West approximately 300 feet to a point, said point being located in the Northern right of way line of U.S. Highway No. 158; running thence North 76 degrees 30' West along the right of way line of said Highway a distance of approximately 100 feet to a point, said point being the Eastern right of way line of State Road No. 1246; thence following the Eastern right of way line of said North Carolina State Road No. 1246 and running in a general Northerly direction a distance of approximately 3350 feet to a point; running thence in a general Eastwardly direction a distance of approximately 200 feet to a point; running thence in a general Northerly direction a distance of approximately 1175 feet to a point, marked by a concrete marker, said point lying North 47 degrees 52' West and 300 feet from the Western edge of the Maple Air Strip; running thence South 47 degrees 52' East a distance of 300 feet to a point located at the edge of the Maple Air Strip; running thence South 41 degrees 58' West a distance of 2200 feet to a point, said point being the Southwest corner of the Maple Air Strip; running thence South 47 degrees 52' East a distance of 200 feet to a point, said point being the Southeast corner of the Maple Air Strip; running thence North 41 degrees 58' East along the Eastern edge of the Maple Air Strip a distance of 1510 feet to a point; running thence South 47 degrees 52' East a distance 175 feet to a point; running thence South 41 degrees 58' West a distance of 3370 feet to a point located in the Northern right of way line of U.S. Highway No. 158; running thence South 76 degrees 30' East along the Northern right of way line of said Highway a distance of 480 feet to a point, said point being the point and place of beginning. The property herein described contains property located on both the North and South sides of U.S. Highway No. 158.

TRACT II: Beginning at a point marked by a concrete monument, said point being located North 47 degrees 52' West and 300 feet from a point located on the Western edge of the Maple Air Strip, said point on the Western edge of said Air Strip being 2200 feet from the Southwest corner of said Air Strip; running thence North 42 degrees 08' East a distance of 3866.0 feet to a point; running thence South 47 degrees 52' East 798 feet to a point; running thence South 41 degrees 58' West 1250.0 feet to a point; running thence South 75 degrees 10' East 1518.6 feet to a point; running thence South 25 degrees 30' East 689.7 feet to a point; running thence South 24 degrees 15' East 1537.8 feet to

a point; running thence South 19 degrees 15' East 1408.4 feet to a point, said point being known as Douglas Corner; running thence South 71 degrees 24' West 2130.3 feet to a point; running thence South 88 degrees 2' West 1463.9 feet to a point; running thence North 72 degrees 7' West 1346.4 feet to a point; running thence North 19 degrees 10' East 457.6 feet to a point; running thence North 12 degrees 10' West 895.0 feet to a point; running thence North 47 degrees 52' West 535.0 feet to a point; running thence North 47 degrees 52' West 175 feet to a point, said point being located at the edge of the Maple Air Strip, and being located 1510 feet from the Southeast corner of said Air Strip; running thence North 41 degrees 58' East 2550.0 feet to a point, said point being the Northeast corner of said Maple Air Strip; running thence North 47 degrees 52' West 200 feet to a point, said point being the Northwest corner of said Maple Air Strip; running thence South 41 degrees 58' West 1800 feet to a point, said point being located at the edge of said Maple Air Strip; running thence North 47 degrees 52' West 300 feet to a point, said point being the point and place of beginning.

TRACT III: Beginning at a point located 25 feet Southwest of the Southwest corner of the paved portion of the Maple Air Strip; running thence North 41 degrees 58' East a distance of 4000 feet to a point, said point being located 25 feet Northwest of the Northwest corner of the paved portion of the said Maple Air Strip; running thence South 47 degrees 52' East a distance of 200 feet to a point, said point being located 25 feet Northeast of the Northeast corner of said Maple Air Strip; running thence South 41 degrees 58' West a distance of 4060 feet to a point, said point being located 25 feet Southeast of the Southeast corner of said Maple Air Strip; running thence North 47 degrees 52' West a distance of 200 feet to a point, said point being the point and place of beginning. The property herein described contains the Maple Air Strip.

TRACT IV: Beginning at a point located in the Northern right of way line of U.S. Highway No. 158, said point being located South 76 degrees 30' East and approximately 1500 feet from the intersection of State Road No. 1246 with said Highway No. 158, said point also being the beginning point for Tract I as was hereinbefore described and Tract V as will be hereinafter described; running thence North 76 degrees 30' West along the Northern right of way line of Highway No. 158 a distance of 480 feet to a point; running thence North 41 degrees 58' East 3370.0 feet to a point; running thence South 47 degrees 52' East 535 feet to a point; running thence South 12 degrees 10' East 895.0 feet to a point; running thence South 67 degrees 31' West 329.0 feet to a point; running thence South 59 degrees 16' West 759.0 feet to a point; running thence North 22 degrees 11' East 112 feet to a point; running thence North 55 degrees 34' West 652.9 feet to a point; running thence South 32 degrees 26' West 329.0 feet to a point; running thence South 31 degrees 52' West 1310 feet to a point; said point being the point and place of beginning.

TRACT V: Beginning at a point located in the Northern right of way line of U.S. Highway No. 158, said point being located South 76 degrees 30' West and 1500 feet from the intersection of State Road No. 1246 with U.S. Highway No. 158, said point also being the point of beginning for Tracts I and IV as hereinbefore described; running thence South 76 degrees 30' East along the Northern right of way line of said Highway; running thence across said Highway South 45 degrees 3' West a distance of 396.0 feet to a point; running thence South 64 degrees 33' West a distance of 198.0 feet to a point; running thence South 56 degrees 3' West 115.5 feet to a point; running thence South 87 degrees 3' West 132 feet to a point; running thence South 63 degrees 3' West 166.2 feet to a point; running thence North 31 degrees 52' East 825 feet to a point, said point being the point and place of beginning.

LESS AND EXCEPT that certain portion of land conveyed to C. Victor Sawyer and wife, Alethia R. Sawyer as set forth in Deed recorded in Book 232, Page 468, in the Currituck County Public Registry and more particularly described as follows:

BEGINNING at a point in the south side of the right of way of U.S. Highway No. 158, said point also being located in a common property line between the State of North Carolina and C. Victor Sawyer; running thence South 45 degrees 37' 46" West 297.45 feet to a point; running thence South 65 degrees 02' 16" West 198.00 feet to a point; running thence South 56 degrees 32' 16" West 115.5 feet to a point; running thence South 87 degrees 32' 16" West 132 feet to a point; running thence South 63 degrees 32' 16" West 278.70 feet to a point; running thence South 32 degrees 21' 16" West 97.9 feet to a point; running thence North 26 degrees 06' 44" West 282 feet to a point; running thence North 28 degrees 31' 22" West 233.27 feet to a point; running thence North 20 degrees 21' West 410.90 feet to a point; running thence North 20 degrees 51' West 103.05 feet to a point located in the Southern right of way of U.S. Highway No. 158, said point also being located in a common line between the State of North Carolina and Doc H. Etheridge; running thence South 74 degrees 28' 17" East 1387.86 feet along the Southern right of way of U.S. Highway No. 158 to the point and place of beginning and containing 13.351 acres as shown on Survey No. L-609 dated June 12, 1987 by S. Elmo Williams, RLS. The above description covers a portion of Tracts I and V of that land described in Title Book 1, Page 36."

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

In the General Assembly read three times and ratified this the 28th day of April, 2005.

Became law upon approval of the Governor at 2:40 p.m. on the 28th day of April, 2005.

H.B. 239 **Session Law 2005-19**

AN ACT TO EXEMPT FROM THE LAW GOVERNING SMOKING RESTRICTIONS LOCAL HEALTH DEPARTMENTS AND THE BUILDINGS AND GROUNDS WHERE THEY ARE LOCATED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599 reads as rewritten:

"§ **143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.

(2) An enclosed elevator.

(3) Public school bus.

(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.

(5) Local health ~~department.~~department and the building and grounds where the local health department is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health department.

(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.

(7) Tobacco manufacturing, processing, and administrative facilities."

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

In the General Assembly read three times and ratified this the 18th day of April, 2005.

Became law upon approval of the Governor at 7:38 p.m. on the 28th day of April, 2005.

H.B. 752 **Session Law 2005-20**

AN ACT TO EXEMPT FROM THE UMSTEAD ACT THE SALE BY NORTH CAROLINA STATE UNIVERSITY OF PRODUCTS PRODUCED BY THE DAIRY AND PROCESS APPLICATION LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) reads as rewritten:

"(c) The provisions of subsection (a) shall not prohibit:

…

(1b) The sale by North Carolina State University at University-owned facilities of dairy products, including ice cream, cheeses, milk-based beverages, and the by-products of heavy cream, produced by the Dairy and Process Applications Laboratory, so long as any profits are used to support the Department of Food Science and College of Agriculture and Life Sciences at North Carolina State University.

…."

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

In the General Assembly read three times and ratified this the 21st day of April, 2005.

Became law upon approval of the Governor at 7:40 p.m. on the 28th day of April, 2005.

S.B. 210 **Session Law 2005-21**

AN ACT TO EXTEND THE SUNSET PROVISION OF THE ACT THAT STRENGTHENED THE AUTHORITY OF THE STATE VETERINARIAN TO PREVENT AND CONTROL AN OUTBREAK OF FOOT-AND-MOUTH DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2001-12, as amended by S.L. 2003-6, reads as rewritten:

"**SECTION 11.** This act is effective when it becomes law and expires ~~1 October 2005.~~ October 1, 2009."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 21st day of April, 2005.

Became law upon approval of the Governor at 7:41 p.m. on the 28th day of April, 2005.

H.B. 496 **Session Law 2005-22**

AN ACT REQUIRING LOCAL SCHOOL BOARDS TO ADOPT POLICIES PERMITTING STUDENTS WITH ASTHMA OR STUDENTS SUBJECT TO ANAPHYLACTIC REACTIONS, OR BOTH, TO POSSESS AND SELF-ADMINISTER ASTHMA MEDICATION, AND TO RECODIFY CERTAIN STATUTES TO CREATE A NEW ARTICLE 26A IN CHAPTER 115C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 115C of the General Statutes is amended by adding the following new Article to read:

"Article 26A.

"Special Medical Needs of Students.

"**§ 115C-375.2. Possession and self-administration of asthma medication by students with asthma or students subject to anaphylactic reactions, or both.**

(a) Local boards of education shall adopt a policy authorizing a student with asthma or a student subject to anaphylactic reactions, or both, to possess and self-administer asthma medication on school property during the school day, at school-sponsored activities, or while in transit to or from school or school-sponsored events. As used in this section, "asthma medication" means a medicine prescribed for the treatment of asthma or anaphylactic reactions and includes a prescribed asthma inhaler or epinephrine auto-injector. The policy shall include a requirement that the student's parent or guardian provide to the school:

(1) Written authorization from the student's parent or guardian for the student to possess and self-administer asthma medication.

(2) A written statement from the student's health care practitioner verifying that the student has asthma or an allergy that could result in an anaphylactic reaction, or both, and that the health care practitioner prescribed medication for use on school property during the school day, at school-sponsored activities, or while in transit to or from school or school-sponsored events.

(3) A written statement from the student's health care practitioner who prescribed the asthma medication that the student understands, has been instructed in self-administration of the asthma medication, and has demonstrated the skill level necessary to use the asthma medication and any device that is necessary to administer the asthma medication.

(4) A written treatment plan and written emergency protocol formulated by the health care practitioner who prescribed the medicine for managing the student's asthma or anaphylaxis episodes and for medication use by the student.

(5) A statement provided by the school and signed by the student's parent or guardian acknowledging that the local school administrative unit and its employees and agents are not liable for an injury arising from a student's possession and self-administration of asthma medication.

(6) Other requirements necessary to comply with State and federal laws.

(b) The student must demonstrate to the school nurse, or the nurse's designee, the skill level necessary to use the asthma medication and any device that is necessary to administer the medication.

(c) The student's parent or guardian shall provide to the school backup asthma medication that shall be kept at the student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(d) Information provided to the school by the student's parent or guardian shall be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(e) If a student uses asthma medication prescribed for the student in a manner other than as prescribed, a school may impose on the student disciplinary action according to the school's disciplinary policy. A school may not impose disciplinary action that limits or restricts the student's immediate access to the asthma medication.

(f) The requirement that permission granted for a student to possess and self-administer asthma medication shall be effective only for the same school and for 365 calendar days and must be renewed annually.

(g) No local board of education, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any act authorized by this subsection, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing."

SECTION 2.(a) G.S. 115C-307(c) reads as rewritten:

"(c) To Provide Some Medical Care to Students. – It is within the scope of duty of teachers, including substitute teachers, teacher assistants, student teachers or any other public school employee when given such authority by the board of education or its ~~designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or life saving~~

~~techniques in which the employee has been trained in a program approved by the State Board of Education: Provided, that no one shall be required to administer drugs or medication or attend life saving techniques programs.~~

~~Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any such authorized act or for any omission relating to such act unless such act or omission amounts to gross negligence, wanton conduct or intentional wrongdoing. Any person, serving in a voluntary position at the request of or with the permission or consent of the board of education or its designee, who has been given the authority by the board of education or its designee to act under (ii) above shall not be liable in civil damages for any such authorized act or for any omission relating to such act unless the act amounts to gross negligence, wanton conduct or intentional wrongdoing.~~

~~At the commencement of each school year, but prior to the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program.~~designee to provide medical care to students as provided in G.S. 115C-375.1."

SECTION 2.(b) Article 26A, as created in Section 1 of this act, is amended by adding the following new section to read:

"§ **115C-375.1. To provide some medical care to students.**

It is within the scope of duty of teachers, including substitute teachers, teacher assistants, student teachers, or any other public school employee when authorized by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or lifesaving techniques in which the employee has been trained in a program approved by the State Board of Education. No employee, however, shall be required to administer drugs or medication or attend lifesaving techniques programs.

Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any authorized act or for any omission relating to that act unless the act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. Any person, serving in a voluntary position at the request of or with the permission or consent of the board of education or its designee, who has been given the authority by the board of education or its designee to act under (ii) above shall not be liable in civil damages for any authorized act or for any omission relating to the act unless the act amounts to gross negligence, wanton conduct, or intentional wrongdoing.

At the commencement of each school year, but before the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program."

SECTION 3.(a) G.S. 115C-47(42) is recodified as G.S. 115C-375.3.

SECTION 3.(b) G.S. 115C-375.3, as established in subsection (a) of this section, reads as rewritten:

"§ **115C-375.3. ~~To Implement~~ Guidelines to support and assist students with diabetes.**

Local boards of education shall ensure that the guidelines adopted by the State Board of Education under G.S. 115C- 12(31) are implemented in schools in which students with diabetes are enrolled. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and

implementation of individual diabetes care plans. Local boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans."

SECTION 4.(a) G.S. 115C-47(44) is recodified as G.S. 115C-375.4.

SECTION 4.(b) G.S. 115C-375.4, as established in subsection (a) of this section, reads as rewritten:

"§ **115C-375.4. ~~To Ensure that Schools Provide Information Concerning~~ Meningococcal Meningitis and Influenza and Their Vaccines.**

Local boards of education shall ensure that schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children."

SECTION 5. G.S. 115C-288(e) reads as rewritten:

"(e) To Discipline Students and to Assign Duties to Teachers with Regard to the Discipline, General Well-being, and Medical Care of Students. – The principal shall have authority to exercise discipline over the pupils of the school ~~pursuant to~~ under policies adopted by the local board of education as prescribed by G.S. 115C-391(a). The principal shall use reasonable force to discipline students ~~and shall assign duties to teachers with regard to the general well-being and the medical care of students pursuant to the provisions of G.S. 115C-307 and 115C-390. The principal also~~ under G.S. 115C-390 and may suspend or dismiss pupils ~~pursuant to the provisions of~~ under G.S. 115C-391. The principal shall assign duties to teachers with regard to the general well-being and the medical care of students under G.S. 115C-307 and Article 26A of this Chapter."

SECTION 6. The Department of Health and Human Services, Department of Public Instruction, or other appropriate State agencies shall apply for any federal grants for which the entity is eligible under 42 U.S.C. § 280g or other federal statutes or regulations related to treating, preventing, or training on children's asthma.

SECTION 7. This act is effective when it becomes law. G.S. 115C-375.2, as established in Section 1 of this act, applies beginning with the 2005-2006 school year.

In the General Assembly read three times and ratified this the 25th day of April, 2005.

Became law upon approval of the Governor at 7:42 p.m. on the 28th day of April, 2005.

H.B. 45 **Session Law 2005-23**

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES' ADULT PROTECTIVE SERVICES TASK FORCE TO COLLABORATE WITH OTHERS INTERESTED IN IMPROVING ADULT PROTECTIVE SERVICES AND REPORT, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Adult Protective Services Task Force, shall collaborate with stakeholders and other persons interested in improving adult protective services and report its findings and recommendations to the North Carolina Study Commission on Aging and to the Legislative Study Commission on State Guardianship Laws on or before April 1, 2006.

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

In the General Assembly read three times and ratified this the 20th day of April, 2005.

Became law upon approval of the Governor at 7:45 p.m. on the 28th day of April, 2005.

H.B. 963 **Session Law 2005-24**

AN ACT AFFECTING THE REGULATION OF ABANDONED OR JUNKED MOTOR VEHICLES IN THE TOWN OF MATTHEWS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2004-30 reads as rewritten:

"**SECTION 2.** This act applies to the Cities of Greenville and Henderson and the ~~Town~~ Towns of Matthews and Waynesville only."

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

In the General Assembly read three times and ratified this the 2nd day of May, 2005.

Became law on the date it was ratified.

H.B. 973 **Session Law 2005-25**

AN ACT AFFECTING THE REGULATION OF ABANDONED OR JUNKED MOTOR VEHICLES IN THE CITY OF JACKSONVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-303.2(a) reads as rewritten:

"(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be

supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than ~~one hundred dollars ($100.00).~~five hundred dollars ($500.00)."

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

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

In the General Assembly read three times and ratified this the 2nd day of May, 2005.

Became law on the date it was ratified.

S.B. 586 **Session Law 2005-26**

AN ACT TO AUTHORIZE THE ADDITION OF NEW STATE PARKS AT CARVERS CREEK AND IN THE HICKORY NUT GORGE/CHIMNEY ROCK AREA TO THE STATE PARKS SYSTEM.

Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, Carvers Creek and surrounding lands in Cumberland County represents an excellent example of the natural features of the Sandhills Region of North Carolina, with rolling hills, ravines, and narrow stream bottoms; and

Whereas, the Carvers Creek site includes endangered red-cockaded woodpeckers, rare plants, high quality longleaf pine forests, wetlands, and other natural communities characteristic of the Sandhills; and

Whereas, the Carvers Creek site has been found to possess biological, scenic, and recreational resources of statewide significance; and

Whereas, the Hickory Nut Gorge/Chimney Rock area in and near western Rutherford County contains spectacular cliffs, rugged mountains, fissure caves, waterfalls, and unusually rich soils that support at least 36 rare plant species and 14 rare animals; and

Whereas, the Hickory Nut Gorge/Chimney Rock area is one of the major centers of biodiversity in North Carolina, and is also of great geological interest; and

Whereas, the Hickory Nut Gorge/Chimney Rock area has been found to possess biological, geological, scenic, and recreational resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Carvers Creek State Park to the State Parks System as provided in G.S. 113-44.14(b).

SECTION 2. The General Assembly authorizes the Department of Environment and Natural Resources to add a State Park unit located in the Hickory Nut Gorge/Chimney Rock area to the State Parks System as provided in G.S. 113-44.14(b).

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

In the General Assembly read three times and ratified this the 28th day of April, 2005.

Became law upon approval of the Governor at 11:02 a.m. on the 4th day of May, 2005.

S.B. 462 **Session Law 2005-27**

AN ACT TO EXTEND THE SUNSET OF THE AUTHORIZATION FOR THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED MEASURING DURING A PILOT PROGRAM IN DESIGNATED CORRIDORS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5 of S.L. 2003-280 reads as rewritten:

"**SECTION 5.** This act becomes effective July 1, 2003, and expires ~~June 30, 2006.~~September 30, 2007."

SECTION 2. Section 6 of S.L. 2003-380 reads as rewritten:

"**SECTION 6.** This act is effective when it becomes law. Section 5 of this act expires ~~June 30, 2006.~~September 30, 2007."

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

In the General Assembly read three times and ratified this the 5th day of May, 2005.

Became law on the date it was ratified.

H.B. 798 **Session Law 2005-28**

AN ACT TO REPEAL THE LAW REGULATING FOX HUNTING IN HARNETT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of Chapter 636 of the 1977 Session Laws reads as rewritten:

"**Sec. 4.** This act shall apply only to Burke, Caldwell, ~~Harnett,~~ Lee, Pamlico and Martin Counties."

SECTION 2. This act applies only to Harnett County.

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

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law on the date it was ratified.

H.B. 807 **Session Law 2005-29**

AN ACT AUTHORIZING THE TOWN OF FARMVILLE TO CONVEY CERTAIN PROPERTY AT A PRIVATE SALE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Farmville may convey by private negotiation and sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property to the Farmville Economic Development Council, Incorporated:

Lots #6, 7, 8, 9, 22, 23, 24, 25, 26, 27, 28, and 29 of the Washington Heights Subdivision, according to the map made by Joe W. Stout & Company on February 4, 1920, and of record in Map Book 1, page 179 of the Pitt County Registry. The property is further described on a survey entitled "Survey for Town of Farmville," prepared by McDavid Associates, Inc., and dated April 26, 2001.

SECTION 1.(b) The Farmville Economic Development Council shall use the property described in subsection (a) of this section for any of the following public purposes that stimulate the local economy and promote business in the Town of Farmville: the location of new or expanded service or industrial facilities, manufacturing, assembly, fabrication, processing, warehousing, research and development, office use or use as a shell business, or new business incubator. The Council may lease, subdivide, mortgage, sell, or convey the property for any public purpose authorized in this act.

SECTION 2. The restrictions stated in this act shall apply only to the Town of Farmville and the Farmville Economic Development Council, Incorporated.

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

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law on the date it was ratified.

H.B. 887 **Session Law 2005-30**

AN ACT AMENDING THE CHARTER OF THE CITY OF BURLINGTON TO ALLOW THE CITY TO IMPOSE CERTAIN RESTRICTIONS ON PERSONS SOLICITING ON STATE HIGHWAYS AND STREETS.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter A of Chapter V of the Charter of the City of Burlington, being Chapter 119 of the 1961 Session Laws, is amended by adding the following new subsection to read:

"(e) Nothing in G.S. 20-175 shall prohibit the city council from adopting ordinances placing additional restrictions or prohibitions on persons standing on any street, highway, or right-of-way within the city and soliciting or attempting to solicit employment, business, or contributions from the driver or occupant of any motor vehicle. The city may not adopt ordinances placing restrictions or prohibitions on the activities of licensees, employees, or contractors of the State Department of Transportation."

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

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law on the date it was ratified.

H.B. 982 **Session Law 2005-31**

AN ACT TO PROHIBIT HUNTING AND THE DISCHARGE OF HIGH-POWERED RIFLES FROM THE RIGHTS-OF-WAY OF PUBLIC ROADS IN VANCE COUNTY, AND TO INCREASE THE FINES FOR VIOLATIONS OF THE LAW REGULATING HUNTING ON REGISTERED LAND IN VANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to hunt, take, or kill wild animals or wild birds from, on, or across the right-of-way of any public road or highway in Vance County.

SECTION 2. It is unlawful to discharge a centerfire rifle from, on, or across the right-of-way of any public road or highway in Vance County.

SECTION 3. Violation of Sections 1 or 2 of this act is a Class 2 misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00).

SECTION 4. Subsection (e) of Section 9 of Chapter 903 of the 1985 Session Laws, as amended by Chapter 967 of the 1987 Session Laws, reads as rewritten:

"(e) Unless a different punishment is elsewhere provided under this act, a violation of any provision of this act is a Class 2 misdemeanor punishable by a fine ~~not to exceed fifty dollars ($50.00)~~ of not less than two hundred fifty dollars ($250.00) or imprisonment not to exceed 30 days."

SECTION 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 6. This act applies only to Vance County.

SECTION 7. This act becomes effective October 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law on the date it was ratified.

H.B. 997 **Session Law 2005-32**

AN ACT INCREASING THE FORCE ACCOUNT LIMIT OF DAVIE COUNTY AS TO AN EMERGENCY MEDICAL SERVICES STATION.

The General Assembly of North Carolina enacts:

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

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

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred~~

~~twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000).~~ six hundred thousand dollars ($600,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 2. This act applies only to the expansion and improvement of Emergency Medical Services Station Number One.

SECTION 3. This act applies to Davie County only.

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

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law on the date it was ratified.

H.B. 1021 **Session Law 2005-33**

AN ACT REQUIRING THE CONSENT OF NORTHAMPTON COUNTY BEFORE LAND IN THE COUNTY MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Alamance, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, Wayne, Wilkes, and Yancey Counties only."

SECTION 2. This act applies to Northampton County only.

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

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law on the date it was ratified.

H.B. 946 **Session Law 2005-34**

AN ACT TO ALLOW THE TOWN OF OSSIPEE TO AMEND ITS BUDGET ORDINANCES FOR THE 2002-2003 AND 2003-2004 FISCAL YEARS AND TO ALLOW THE TOWN OF MILLS RIVER TO AMEND ITS BUDGET

ORDINANCE FOR THE 2003-2004 FISCAL YEAR TO SHOW CONFORMANCE WITH G.S. 136-41.2.

Whereas, G.S. 136-41.2, as amended by S.L. 1999-458, provides that for municipalities incorporated with an effective date of on or after January 1, 2000, certain shared revenues are available to the municipality only if it has adopted a budget ordinance showing that funds have been appropriated for at least four of the following municipal services: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning; and

Whereas, The Town of Ossipee was incorporated by S.L. 2002-137 effective when the results of the incorporation referendum were certified following the 2002 general election; and

Whereas, the municipal incorporation petition submitted under G.S. 120-163 stated in accordance with G.S. 120-163(c) that the municipality would offer four of the services listed above no later than the first day of the third fiscal year following the effective date of the incorporation; and

Whereas, the Town of Mills River was incorporated by S.L. 2002-242, effective upon ratification on June 24, 2003; and

Whereas, the municipal incorporation petition submitted under G.S. 120-36 stated in accordance with G.S. 120-163 that the Town of Mills River would offer four of the services listed above no later than the first day of the third fiscal year following the effective date of the incorporation; and

Whereas, the requirement for expenditures by the third fiscal year was also contained in S.L. 1999-458; and

Whereas, the towns believed that the two different parts of S.L. 1999-458 were intended to allow new municipalities a period of time to receive funds as if they were establishing the services; and

Whereas, the Town of Ossipee actually expended funds for those four services, the sum of $4,320 for fire protection as a contractual payment to the Altamahaw-Ossipee Fire Department, appropriations for water distribution under Sections 3 and 4 of its budget ordinance, and $1,800 appropriated in the budget ordinance for "Planning and Zoning Board", to be used to pay a consultant to begin the process of adopting a zoning ordinance; and

Whereas, the 2002-2003 and 2003-2004 budget ordinances showed a line item for "Environmental Protection" with a zero for the amount, but in fact in the 2002-2003 and 2003-2004 fiscal years expended funds for legal and administrative purposes related to preparing to provide solid waste collection or disposal; and

Whereas, the Town of Mills River actually expended funds during its 2003-2004 fiscal year for four services as follows: the sum of $297,531 for fire protection as a contractual payment to the Mills River Fire Department; and $34,500 for planning and zoning as a contractual payment to Henderson County; and $9,380 in legal expenses for planning and zoning; and $437.50 in preparation for police protection in legal fees for negotiation of a contract with the Henderson County Sheriff's Department; and $262.50 in preparing for solid waste collection in legal fees to research various issues which arose with regard to these services; and

Whereas, the 2003-2004 budget for the Town of Mills River shows line items for legal expenses and engineering and, in fact, a portion of each of these appropriations

was intended to allow for the legal and administrative costs of preparing to offer solid waste collection, police protection, street lighting, and planning and zoning; and

Whereas, the towns clearly expended funds for those four categories, but did not itemize them in their budget ordinances in the format strictly required; and

Whereas, S.L. 1999-458 appeared to allow the towns three years in any case; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Ossipee shall, upon amending its budget ordinances for the 2002-2003 and 2003-2004 fiscal years to reflect actual expenditures by the town in preparing to provide solid waste collection or disposal, be considered to have complied with the provisions of G.S. 136-41.2 for those two fiscal years.

SECTION 2. The Town of Mills River shall, upon amending its budget ordinance for the 2003-2004 fiscal year to reflect actual expenditures by the town in preparing to provide police protection and solid waste collection, be considered to have complied with the provisions of G.S. 136-41.2 for the 2003-2004 fiscal year.

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

In the General Assembly read three times and ratified this the 11th day of May, 2005.

Became law on the date it was ratified.

H.B. 399 **Session Law 2005-35**

AN ACT TO ALLOW COUNTIES WITH NO INCORPORATED MUNICIPALITIES TO EXERCISE MOST MUNICIPAL FUNCTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a new Article to read:

"Article 24.

"Unified Government.

"**§ 153A-471. Unified government.**

(a) Except as provided in this section, the powers, duties, functions, rights, privileges, and immunities of a city are vested with any county that has no portion of an incorporated municipality located within its boundaries.

(b) All of the following shall apply to any county exercising the powers, duties, functions, rights, privileges, and immunities of a city under this Article:

(1) It may not exercise any such powers, duties, functions, rights, privileges, and immunities outside the boundaries of the county.

(2) Article 4A of Chapter 160A of the General Statutes (Extension of Corporate Limits) does not apply.

(3) Article 5 of Chapter 160A of the General Statutes (Form of Government) does not apply.

(4) Article 7 of Chapter 160A of the General Statutes (Administrative Offices) does not apply.

(5) Article 13 of Chapter 160A of the General Statutes (Law Enforcement) does not apply.

(6) G.S. 153A-340(b) (Zoning of Bona Fide Farms) shall apply to all areas within the county boundaries.

(7) The provisions of Chapter 163 of the General Statutes relating to municipal elections do not apply except to the extent they applied to the county absent this Article.

(c) The board of commissioners may by ordinance provide that this Article does not confer the power, duty, function, right, privilege, or immunity of a city upon the county as to a specific power, duty, function, right, privilege, or immunity, and as to such specified power, duty, function, right, privilege, or immunity it shall not be considered as a city.

(d) If the board of commissioners exercises any power, duty, function, right, privilege, or immunity authorized under both Chapter 153A and Chapter 160A of the General Statutes, and those statutes conflict, the board of commissioners shall state in their minutes under which Chapter the power, duty, function, right, privilege, or immunity is being exercised.

"**§ 153A-472. Definitions.**

For the purposes of this Article, any statutory reference to:

(1) A city shall be construed as a reference to a county.

(2) A city council or governing board shall be construed as a reference to the board of commissioners.

(3) The mayor shall be construed as a reference to the chair of the board of commissioners.

(4) Any other city official shall be construed as a reference to the equivalent county official.

"**§ 153A-473. Applicability.**

This Article only applies to a county if approved by the qualified voters of the county in a referendum called by the board of commissioners in accordance with G.S. 163-287. The referendum shall be conducted by the county board of elections in accordance with the provisions of law generally applicable to special elections. The ballot question shall be determined by the board of commissioners after consultation with the county attorney as to form."

SECTION 2. G.S. 120-166 reads as rewritten:

"§ **120-166. Additional criteria; nearness to another municipality.**

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census. For purposes of this section, "municipality" means a city as defined by G.S. 160A-1(2) or a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) The proposed municipality is entirely on an island that the nearby city is not on;

(2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) The municipalities within the distances described in subsection (a) of this section by resolution express their approval of the incorporation; or

(4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved."

SECTION 3. G.S. 120-169 reads as rewritten:

"§ **120-169. Additional criteria; area unincorporated.**

The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by ~~G.S. 153A-1(1).~~G.S. 153A-1(1), or if any of the proposed municipality is included within the boundary of a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes."

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

In the General Assembly read three times and ratified this the 5th day of May, 2005.

Became law upon approval of the Governor at 10:26 a.m. on the 12th day of May, 2005.

H.B. 707 **Session Law 2005-36**

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF CHILD DEVELOPMENT, TO STRENGTHEN THE LAWS REGULATING STAR-RATED LICENSURE FOR CHILD CARE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-90 reads as rewritten:

"§ **110-90. Powers and duties of Secretary of Health and Human Services.**

The Secretary shall have the following powers and duties under the policies and rules of the Commission:

(1) To administer the licensing program for child care facilities.

(1a) To establish a fee for the licensing of child care centers. The fee does not apply to a religious-sponsored child care center operated pursuant to a letter of compliance. The amount of the fee may not exceed the amount listed in this subdivision.

Capacity of Center	**Maximum Fee**
12 or fewer children	$ 35.00
13-50 children	$125.00
51-100 children	$250.00
101 or more children	$400.00

(2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.

(3) To employ the administrative personnel and staff as may be necessary to implement this Article where required services, inspections or

reports are not available from existing State agencies and units of local government.

(4) To issue a rated license to any child care facility which meets the standards established by this Article. The rating shall be based on the following:

a. Before January 1, 2008, for any child care facility currently holding a license of two to five stars, the rating shall be based on program standards, education levels of staff, and compliance history of the child care ~~facility.~~facility. By January 1, 2008, the rating shall be based on program standards and education levels of staff.

b. Effective January 1, 2006, for any new license issued to a child care facility with a rating of two to five stars, the rating shall be based on program standards and education levels of staff.

c. By January 1, 2008, for any child care facility to maintain a license or Notice of Compliance, the child care facility shall have a compliance history of at least seventy-five percent (75%), as assessed by the Department. When a child care facility fails to maintain a compliance history of at least seventy-five percent (75%) for the past 18 months or during the length of time the facility has operated, whichever is less, as assessed by the Department, the Department may issue a provisional license or Notice of Compliance.

d. Effective January 1, 2006, for any new license or Notice of Compliance issued to a child care facility, the facility shall maintain a compliance history of at least seventy-five percent (75%), as assessed by the Department. When a child care facility fails to maintain a compliance history of at least seventy-five percent (75%) for the past 18 months or during the length of time the facility has operated, whichever is less, as assessed by the Department, the Department may issue a provisional license or Notice of Compliance.

e. The Department shall provide additional opportunities for child care providers to earn points for program standards and education levels of staff.

(5) To revoke the license of any child care facility that ceases to meet the standards established by this Article and rules on these standards adopted by the Commission, or that demonstrates a pattern of noncompliance with this Article or the rules, or to deny a license to any applicant that fails to meet the standards or the rules. These revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.

(7) To promote and coordinate educational programs and materials for operators of child care facilities which are designed to improve the quality of child care available in the State, using the resources of other

State and local agencies and educational institutions where appropriate.

(8) Repealed by Session Laws 1997-506, s. 5.

(9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a license. These actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation, or suspension of a license or the levying of a civil or administrative penalty.

(11) To issue a license to any child care arrangement that does not meet the definition of child care facility in G.S. 110-86 whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the Commission and voluntarily applies for a child care facility license. The Commission shall adopt rules for the issuance or removal of the licenses."

SECTION 2. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 2nd day of May, 2005.

Became law upon approval of the Governor at 10:27 a.m. on the 12th day of May, 2005.

H.B. 908 **Session Law 2005-37**

AN ACT TO PROVIDE THAT ONE OF THE FIFTEEN MEMBERS OF THE YADKIN/PEE DEE RIVER BASIN ADVISORY COMMISSION MAY BE FROM A WATER OR SEWER MUNICIPAL UTILITY RATHER THAN AN AUTHORITY AND TO PROVIDE THAT MEMBERS OF THE GENERAL ASSEMBLY WHOSE DISTRICTS INCLUDE ANY PART OF THE NORTH CAROLINA PORTION OF THE ROANOKE RIVER BASIN MAY SERVE AS LEGISLATIVE MEMBERS OF THE ROANOKE RIVER BASIN BI-STATE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 77-113(b) reads as rewritten:

"(b) The Yadkin/Pee Dee River Basin Advisory Commission shall be composed of 15 members as follows:

…

(7) One person from a water or sewer municipal ~~authority,~~ utility, appointed by the Governor of North Carolina.

…."

SECTION 2. G.S. 77-92(a) reads as rewritten:

"(a) The Roanoke River Basin Bi-State Commission shall consist of 18 members with each state appointing nine members. The North Carolina delegation to the Commission shall consist of the six members of the General Assembly of North Carolina appointed to the North Carolina Roanoke River Basin Advisory Committee and three nonlegislative members of the North Carolina Roanoke River Basin Advisory

Committee, established pursuant to G.S. 77-103, who represent different geographical areas of the North Carolina portion of the ~~Basin,~~ Basin and who reside within the Basin's watershed, to be appointed by the Governor of North Carolina. The Virginia delegation to the Commission shall be appointed as determined by the Commonwealth of Virginia."

SECTION 3. G.S. 77-92(b) reads as rewritten:

"(b) ~~All members appointed to the Commission from the State of North Carolina and the Commonwealth of Virginia shall reside within the Basin's watershed.~~ Members of the North Carolina House of Representatives, the North Carolina Senate, the Virginia House of Delegates, the Virginia Senate, and federal legislators, who have not been appointed to the Commission and whose districts include any portion of the Basin, may serve as nonvoting ex officio members of the Commission."

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

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law upon approval of the Governor at 10:28 a.m. on the 12th day of May, 2005.

H.B. 508 **Session Law 2005-38**

AN ACT ALLOWING A PERSON WHO HAS RECEIVED AN ABSOLUTE DIVORCE TO CHANGE HIS OR HER NAME IN THE COUNTY WHERE THE DIVORCE WAS GRANTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-12 reads as rewritten:

"§ **50-12. Resumption of maiden or premarriage surname.**

(a) Any woman whose marriage is dissolved by a decree of absolute divorce may, upon application to the clerk of court of the county in which she resides or where the divorce was granted setting forth her intention to do so, change her name to any of the following:

(1) Her maiden name; or

(2) The surname of a prior deceased husband; or

(3) The surname of a prior living husband if she has children who have that husband's surname.

(a1) A man whose marriage is dissolved by decree of absolute divorce may, upon application to the clerk of court of the county in which he resides or where the divorce was granted setting forth his intention to do so, change the surname he took upon marriage to his premarriage surname.

(b) The application shall be addressed to the clerk of the court of the county in which such divorced person ~~resides,~~resides or where the divorce was granted, and shall set forth the full name of the former spouse of the applicant, the name of the county and state in which the divorce was granted, and the term or session of court at which such divorce was granted, and shall be signed by the woman in her full maiden name, or by the man in his full premarriage surname. The clerks of court of the several counties of the State shall record and index such applications in such manner as shall be required by the Administrative Office of the Courts.

(c) If an applicant, since the divorce, has adopted one of the surnames listed in subsection (a) or (a1) of this section, the applicant's use and adoption of that name is validated.

(d) In the complaint, or counterclaim for divorce filed by any person in this State, the person may petition the court to adopt any surname as provided by this section, and the court is authorized to incorporate in the divorce decree an order authorizing the person to adopt that surname."

SECTION 2. This act is effective when it becomes law and applies to petitions filed 90 days after the effective date of this act.

In the General Assembly read three times and ratified this the 4th day of May, 2005.

Became law upon approval of the Governor at 10:30 a.m. on the 12th day of May, 2005.

H.B. 699 **Session Law 2005-39**

AN ACT TO ELIMINATE THE CONSULTATION REQUIREMENT WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS FOR STATE ACQUISITIONS OF REAL PROPERTY AND TO SUBSTITUTE A REQUIREMENT OF PRIOR WRITTEN NOTICE TO THE COMMISSION CHAIRS OF THE INTENDED REAL PROPERTY ACQUISITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-22 reads as rewritten:

"§ **146-22. All acquisitions to be made by Department of Administration.**

Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed acquisition is a purchase of land with an appraised value of at least twenty-five thousand dollars ($25,000), and the acquisition is for other than a transportation purpose, the acquisition may only be made after ~~consultation with~~ written notice to the Joint Legislative Commission on Governmental ~~Operations,~~ Operations given to the Chairs of the Commission at least 30 days prior to the acquisition, who shall forward a copy of the notice to the members of the Commission within three days of their receipt of the notice, and provided further, that acquisitions on behalf of the University of North Carolina Health Care System shall be made in accordance with G.S. 116-37(i), acquisitions on behalf of the University of North Carolina Hospitals at Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), acquisitions on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), and acquisitions on behalf of the Medical Faculty Practice Plan of the East Carolina University School of Medicine shall be made in accordance with G.S. 116-40.6(d). In determining whether the appraised value is at least twenty-five thousand dollars ($25,000), the value of the property in fee simple shall be used. The State may not purchase land as a tenant-in-common without consultation with the Joint Legislative Commission on Governmental Operations if the appraised value of the property in fee simple is at least twenty-five thousand dollars ($25,000)."

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

In the General Assembly read three times and ratified this the 5th day of May, 2005.

Became law upon approval of the Governor at 10:30 a.m. on the 12th day of May, 2005.

H.B. 780 **Session Law 2005-40**

AN ACT TO MODIFY THE PROCESS BY WHICH THE NEED-BASED SCHOLARSHIP LOAN FUND IS ADMINISTERED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-171.65 reads as rewritten:

"§ **90-171.65. Need-based nursing scholarships fund.**

(a) There is created a need-based scholarship loan fund for nursing students. Need-based scholarship loans shall be available for study in nursing programs offered by community colleges and The University of North Carolina, and by private colleges ~~which~~ that offer licensed practical nursing or registered nursing programs. Part-time students and nontraditional students who have post-secondary degrees, and registered nurses pursuing a baccalaureate degree in nursing, are eligible to receive need-based nursing scholarship loans.

(b) Need-based nursing scholarship loan funds shall be administered by the ~~State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the State Education Assistance Authority. The State Board of Community Colleges and the Board of Governors of The University of North Carolina shall allocate the scholarship loan funds among their respective constituent institutions which have programs of education leading to a degree in nursing. Distribution shall be in a manner determined by the appropriate governing body. The State Education Assistance Authority shall distribute scholarship loan funds to private nonprofit colleges which offer nursing degree programs. Distribution shall be in a manner determined by the Board of the State Education Assistance Authority after consultation with the North Carolina Association of Independent Colleges and Universities.~~State Education Assistance Authority in accordance with rules and regulations adopted by the Board of the State Education Assistance Authority. Distribution of scholarship loan funds among students enrolled in the constituent institutions of The University of North Carolina, community colleges, and private colleges shall be in amounts proportionate to the amounts awarded to each such group of students in the preceding fiscal year. Scholarship loans shall be made only to prospective and enrolled nursing students under the terms and conditions established for the need-based nursing scholarship loan program by the State Education Assistance Authority.

(c) The State Education Assistance Authority shall carry out the following functions in implementing the need-based nursing scholarship loan program:

(1) Promulgate the rules and regulations necessary to implement the scholarship ~~program;~~program, including the selection criteria and method of selection of recipients of need-based nursing scholarship loans;

(2) Disburse, collect, and monitor scholarship loan funds;

(3) Establish the terms and conditions of promissory notes executed by loan recipients;

(4) Approve service repayment agreements;

(5) Collect cash repayments required when service repayment is not completed; and

(6) Adopt rules to allow for the forgiveness of scholarship loans if it determines that it is impossible for the recipient to practice nursing in North Carolina for a sufficient time to repay the loan because of the death or permanent disability of the recipient within ten years following graduation or termination of enrollment in a nursing education program.

~~(d) Each institution to which scholarship loan funds are allocated shall publicize the availability of, shall disseminate, receive and review applications for, and shall select the recipients of scholarship loans. Scholarship loans shall be made only to prospective and enrolled nursing students under the terms and conditions established for the need-based nursing scholarship loan program by the State Education Assistance Authority.~~"

SECTION 2. This act becomes effective January 1, 2006, and applies to all scholarship loans awarded after that date.

In the General Assembly read three times and ratified this the 9th day of May, 2005.

Became law upon approval of the Governor at 10:32 a.m. on the 12th day of May, 2005.

H.B. 489 **Session Law 2005-41**

AN ACT CONCERNING PUBLIC-PRIVATE REIMBURSEMENT AGREEMENTS FOR INFRASTRUCTURE DEVELOPMENT BY VARIOUS COUNTIES AND MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. A municipality or county may enter into reimbursement agreements with private developers and property owners for the design and construction of public infrastructure that is included on the municipality's or county's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, public infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

SECTION 2. A municipality or county shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

SECTION 3. A municipality or county may provide for such reimbursements to be paid from any lawful source.

SECTION 4. No reimbursement pursuant to an agreement authorized by this act shall be deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or to be deemed to be a violation or evasion of any provision of said Article. Notwithstanding the foregoing provisions of this section, a construction contract subject to a reimbursement agreement authorized by this act shall not be awarded by a developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the municipality or county.

SECTION 5. For the purpose of this act, "municipality" has the same meaning as "city" under G.S. 160A-1, and thus also includes a town or village.

SECTION 6. This act applies only to the Towns of Apex, Broadway, Cary, Goldston, Holly Springs, Pittsboro, and Siler City, to the City of Sanford, to all municipalities located wholly or partially within Cabarrus County, and to Cabarrus, Chatham, Durham, and Lee Counties, but as to the Town of Broadway only applies as to municipal infrastructure located in Lee County.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of May, 2005.

Became law on the date it was ratified.

H.B. 811 **Session Law 2005-42**

AN ACT TO AMEND THE LAW REGULATING HUNTING IN PITT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5 of S.L. 2002-142 reads as rewritten:

"**SECTION 5.** It is unlawful to release dogs ~~on, or allow them to run on,~~ on posted land without the written, signed, and dated permission of the owner or lessee of the land. This permission shall be renewed annually in order to remain active."

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

In the General Assembly read three times and ratified this the 16th day of May, 2005.

Became law on the date it was ratified.

H.B. 860 **Session Law 2005-43**

AN ACT TO CHANGE THE NAME OF THE GOVERNING BOARD OF THE TOWN OF BAKERSVILLE FROM THE BOARD OF ALDERMEN TO THE TOWN COUNCIL, TO PROVIDE THAT THE MAYOR SHALL BE ELECTED TO A FOUR-YEAR TERM, AND TO PROVIDE THAT THE TOWN COUNCIL SHALL BE ELECTED FOR TWO- AND FOUR-YEAR TERMS.

The General Assembly of North Carolina enacts:

SECTION 1. The governing board of the Town of Bakersville is the Town Council, which consists of three members.

SECTION 2. The Mayor of the Town of Bakersville shall be elected in 2005 and quadrennially thereafter for a four-year term.

SECTION 3. In 2005, the three members of the Town Council of the Town of Bakersville shall be elected. The candidate receiving the highest number of votes shall be elected to a four-year term, and the two candidates receiving the next highest numbers of votes shall each be elected to a two-year term. In 2007 and biennually thereafter, two members shall be elected to two-year terms. In 2009 and quadrennially thereafter, one member shall be elected to a four-year term.

SECTION 4. Section 3 of Chapter 1291 of the 1955 Session Laws is repealed.

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

In the General Assembly read three times and ratified this the 16th day of May, 2005.

Became law on the date it was ratified.

H.B. 962 **Session Law 2005-44**

AN ACT AUTHORIZING THE TOWN OF MATTHEWS TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE TOWN'S PUBLIC NUISANCE ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. A municipality may notify a chronic violator of the municipality's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality gave notice of violation at least three times under any provision of the public nuisance ordinance.

SECTION 2. This act applies to the Town of Matthews only.

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

In the General Assembly read three times and ratified this the 16th day of May, 2005.

Became law on the date it was ratified.

H.B. 987 **Session Law 2005-45**

AN ACT AUTHORIZING THE TOWNS OF CRAMERTON AND GRIFTON TO GIVE ANNUAL NOTICE TO VIOLATORS OF THE TOWN'S WEEDED LOT ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. The Town may notify a violator of the Town's weeded lot ordinance that if the violator's property is found to be in violation of the ordinance again in the calendar year in which notice is given, the Town shall, without further notice, take action to remedy the violation, and the expense of that action shall be charged to the violator. The notice may also provide that for each additional violation the Town shall charge the violator the expense of the action and a surcharge of up to fifty percent (50%) over the expense to remedy the preceding violation. Notice of violation shall be served by registered or certified mail.

SECTION 2. This act applies only to the Towns of Cramerton and Grifton.

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

In the General Assembly read three times and ratified this the 16th day of May, 2005.

Became law on the date it was ratified.

H.B. 540 **Session Law 2005-46**

AN ACT TO AMEND THE HALIFAX COUNTY TOURISM AND DEVELOPMENT TAX AND TO IMPLEMENT A TOURISM AND DEVELOPMENT TAX FOR THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

PART I. HALIFAX COUNTY OCCUPANCY TAX

SECTION 1.1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. – The Halifax County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

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

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~(c) Distribution and use of tax revenue. – Halifax County ~~shall~~must, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~may spend funds remitted to it under this subsection only to promote travel and tourism in Halifax County, to sponsor tourist-oriented events and activities in Halifax County, and to finance tourist-related capital projects in Halifax County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and must use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

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

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

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

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Halifax County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

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

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

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

(c) Reports. – The Authority ~~shall~~must report ~~quarterly and~~ at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures ~~for the preceding quarter and~~ for the year in such detail as the Board may require.

Sec. 3. This act is effective upon ratification."

SECTION 1.2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

PART II. CITY OF ROANOKE RAPIDS OCCUPANCY TAX

SECTION 2.1. Occupancy tax. – (a) Authorization and Scope. – The Roanoke Rapids City Council may levy a room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.2.(a) Distribution and Use of Tax Revenue. – The City of Roanoke Rapids shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Halifax County Tourism Development Authority must hold the funds in a separate account and administer them separately from proceeds of the Halifax County occupancy tax. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and

tourism in the City of Roanoke Rapids and shall use the remainder for tourism-related expenditures in the City of Roanoke Rapids.

The following definitions apply in this subsection:

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

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

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

SECTION 2.2.(b) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Roanoke Rapids City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require.

SECTION 2.3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law. Halifax County must ensure that the membership of the Tourism Development Authority is in compliance with the requirements of this act on or before January 1, 2006.

In the General Assembly read three times and ratified this the 17th day of May, 2005.

Became law on the date it was ratified.

H.B. 871 **Session Law 2005-47**

AN ACT TO ALLOW THE TOWN OF EMERALD ISLE TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of Emerald Isle and Ocean Isle Beach."

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

In the General Assembly read three times and ratified this the 17th day of May, 2005.

Became law on the date it was ratified.

H.B. 415 **Session Law 2005-48**

AN ACT TO GIVE FLEXIBILITY TO MAKE UP INSTRUCTIONAL DAYS MISSED DURING THE 2004-2005 SCHOOL YEAR IN LOCAL SCHOOL ADMINISTRATIVE UNITS LOCATED IN WHOLE OR IN PART IN THE COUNTIES THAT THE PRESIDENT OF THE UNITED STATES DECLARED TO BE DISASTER AREAS FOR HURRICANES FRANCES AND IVAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(a)(1) reads as rewritten:

"(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of either 180 days ~~and~~ or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the ~~180~~ instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

If, due to inclement weather, a local board of education complies with this subdivision by scheduling 1,000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a 10-month term are deemed to have been employed for 180 instructional days, and all other employees shall be compensated as if they had worked their regularly scheduled hours for 180 instructional days."

SECTION 2. This act applies only to local school administrative units located in whole or in part in the counties that (i) were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both and (ii) have missed more than 13 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

SECTION 3. This act applies to the 2004-2005 school year only.

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

In the General Assembly read three times and ratified this the 16th day of May, 2005.

Became law upon approval of the Governor at 4:48 p.m. on the 17th day of May, 2005.

H.B. 125 **Session Law 2005-49**

AN ACT TO AUTHORIZE THE TOWN OF WEST JEFFERSON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX**.**

The General Assembly of North Carolina enacts:

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

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

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

The following definitions apply in this subsection:

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

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

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Aldermen adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members

must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

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

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

SECTION 3. Town administrative provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

In the General Assembly read three times and ratified this the 18th day of May, 2005.

Became law on the date it was ratified.

H.B. 278 **Session Law 2005-50**

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF WALKERTOWN.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Walkertown:

TRACT I (Nancy Wooten property): All of that certain tract or parcel of land lying and being in Walkertown, Forsyth County, North Carolina, more particularly described as follows: BEGINNING at an existing iron pipe lying in the eastern boundary line of Kathleen Yokley (Deed Book 1238, Page 1456), said iron being the northwest corner of property deeded unto Johnny L. Waddell in Deed Book 1617, Page 1279, Forsyth County Registry; thence from said iron pipe, with the eastern line of Kathleen Yokley, North 04 degrees 04 minutes 23 seconds East 657.68 feet to a bent iron at the base of a blown down hickory tree; thence from said iron North 89 degrees 31 minutes 28 seconds East 206.29 feet to a stone; thence North 02 degrees 45 minutes 11 seconds East 181.86 feet to an existing iron pipe; thence with a new line South 81 degrees 44 minutes 19 seconds East 451.09 feet to a new iron pipe lying in the western boundary line of property deeded unto Allie Peddycord in Deed Book 556, Page 458, Forsyth County Registry; thence with the western boundary line of Allie Peddycord South 03

degrees 37 minutes 46 seconds West 891.00 feet to an old existing iron pipe; thence continuing with the western boundary of Allie Peddycord South 03 degrees 37 minutes 46 seconds West 298.86 feet to a planted stone, said stone being the southwestern corner of property deeded unto Allie Peddycord in Deed Book 556, Page 458, Forsyth County Registry; thence from said stone with the northern boundary line of property deeded unto Peddycord, Inc. in Deed Book 1361, Page 1119, Forsyth County Registry South 54 degrees 46 minutes 13 seconds West 66.89 feet to an existing iron pipe, the easternmost corner of property deeded unto Theresa Freibott in Deed Book 1541, Page 912, Forsyth County Registry; thence with the northern line of Theresa Freibott South 75 degrees 20 minutes 10 seconds West 119.52 feet to an existing iron pipe, the southeast corner of property deeded unto Johnny L. Waddell in Deed Book 1617, Page 1279, Forsyth County Registry; thence with the eastern line of Johnny L. Waddell North 23 degrees 58 minutes 26 seconds West 507.38 feet to an existing iron pipe, the northeast corner of Johnny L. Waddell; thence with the northern line of Johnny L. Waddell North 85 degrees 57 minutes 22 seconds West 259.80 feet to an existing iron pipe, the point and place of BEGINNING, containing 15 acres, more or less, according to an unrecorded map and survey by Larry L. Callahan, R.L.S., dated December 20, 1990, and being designated as Tax Block 5400, Lot 11 M.

TRACT II (L. Paige Wooten property): All of that certain tract or parcel of land lying and being in Walkertown, Forsyth County, North Carolina, more particularly described as follows:

BEGINNING at a new iron pipe in the line with Allie Peddycord (Deed Book 556, Page 548) at a corner with Nancy L. Wooten (Deed Book 1835, Page 4792) and thence South 03 degrees 27 minutes 07 seconds West 529.58 feet through an existing iron pipe and continuing on to a second existing iron pipe; thence North 86 degrees 32 minutes 57 seconds West 180.00 feet to a new iron pipe in the line with Wooten; thence North 08 degrees 50 minutes 34 seconds' East 388.21 feet to an existing iron pipe; thence North 48 degrees 32 minutes 14 seconds East 202.67 feet to the point and place of BEGINNING, being 1.67 acres more or less according to a survey by Larry L. Callahan, R.L.S., revised May 19, 1995, and being a building lot cut from the property of Nancy L. Wooten as recorded in the Forsyth County Registry and found at Deed Book 1835, Page 4792).

TRACT III (Jesse Grimm property): All of that certain tract or parcel of land lying and being in Walkertown, Forsyth County, North Carolina, more particularly described as follows:

BEGINNING at a point in the centerline of an old creek bed, said point being the southwest corner of Lot Number 3, as shown on the plat of Winchester, Section Two, as recorded in Plat Book 27, Page 142, in the Office of the Register of Deeds of Forsyth County, North Carolina; thence with southern property line of Lots 3 and 4, Winchester, Section Two, as defined by said creek bed the following six (6) courses and distances: (1) South 68 degrees 09 minutes 12 seconds East 91.33 feet to an iron; (2) thence South 83 degrees 30 minutes 00 seconds East 129.78 feet to an iron; (3) thence North 60 degrees 24 minutes 27 seconds East 38.78 feet to an iron; (4) thence South 73 degrees 54 minutes 09 seconds East 38.26 feet to an iron; (5) thence North 56 degrees 53 minutes 37 seconds East 26.98 feet to an iron; (6) thence North 85 degrees 47 minutes 03 seconds East 155.00 feet to an existing 80D nail in the western line of property now or formerly owned by Allie Peddycord (see Deed Book 556, Page 458, Forsyth County Registry); thence with Peddycord's western line South 03 degrees 27 minutes 04 seconds West 728.26 feet to an iron; thence North 81 degrees 44 minutes 19 seconds

West 451.09 feet to an iron in the eastern line of property now or formerly owned by Kathleen Yokely (see Deed Book 1238, Page 1456, Forsyth County Registry); thence with Yokely's eastern line North 02 degrees 45 minutes 11 seconds East 1005.69 feet to a point in the centerline of an old creek bed, the point and place of Beginning, containing 10.24 acres, more of less, in accordance with a survey prepared by Larry L. Callahan, R.L.S., dated July 30, 1991, and revised October 15, 1991.

SECTION 2. No ad valorem tax liability for fiscal year 2005-2006 shall accrue on the property described in Section 1 of this act based upon the property being located within the corporate limits of the Town of Walkertown on January 1, 2005.

SECTION 3. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 18th day of May, 2005.

Became law on the date it was ratified.

H.B. 478 **Session Law 2005-51**

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE VILLAGE OF TOBACCOVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Village of Tobaccoville:

BEGINNING at a stone, said stone being known as Annie H. Kapp's southeast corner as described and recorded in Deed Book 1168, Page 901 in the Forsyth County Register of Deeds, North Carolina and also being known as the northeast corner of Lot #9 of Lelia M. Spears Estate as recorded in Plat Book 32, Page 134; thence running from said point of beginning along the current Tobaccoville City Limits and near an existing fence the following three bearing and distances: 1) South 02°07'39" West 325.37 feet to a existing iron pipe; 2) South 01°52'27" West 874.34 feet to a existing iron pipe; 3 South 18°28'56" West 272.94 feet to a existing rebar, said rebar being located on the northern right-of-way of Shore Road; thence running with the northern right-of-way of Shore Road North 65°37'47" West 149.14 feet to a point; thence running with eastern property line of Lloyd Nelson & wife property as described and recorded in Deed Book 1901, Page 1544 North 18°52'00" East 211.88 feet to a point; thence running with the northern line of the above said Nelson property North 86°39'10" West 154.66 feet to a point, said point also being known as the northeastern corner of George B. Drauszewski & wife property as described and recorded in Deed Book 2002, Page 2448; thence running with the eastern line of the George B. Drauszewski & wife property as described and recorded in Deed Book 2002, Page 2448, Deed Book 1997, Page 1932 and Deed Book 2002, Page 2443 the following two bearing and distances: 1) North 18º50'00" East 136.16 feet to a point; 2) North 01°52'17" East 550.86 feet to a point; thence running, with the northeastern line of the above said Drauszewski property South 88°12'24" West 30.74 feet to a point near the Beaver Dam Creek; thence running with the eastern property line of the above said Drauszewski property the following thirteen (13) bearing and distances along the above said creek: 1) North 11º35'43" East 26.80 feet to a point; 2) North 32°55'55" West 67.02 feet to a point; 3) North 10°02'39" East 30.98 feet to a point; 4) North 30°25'28" East 31.85 feet to a point; 5) North 05°05'05" West 16.54 feet to a point; 6) North 67° 18'23" West 51.25 feet to a point; 7) North 19°16'05" West 24.44 feet to a point; 8) North

30°55'54" East 34.28 feet to a point; 9) North 60°16'49" East 35.60 feet to a point; 10) North 29°41'31" East 100.30 feet to a point; 11) North 00°00'00" East 49.63 feet to a point; 12) North 27º52'18" West 66.13 feet to a point; 13) North 04°08'13" West 57.18 feet to a point; thence running, with the southern property line of the above said Kapp North 88°21'40" East 321.00 feet to a the point and place of beginning, containing 8.767 acres, more or less, and being the same property known as Forsyth County Tax Lots 009 of Block 4968C and 045 of Block 4968 as is shown on the Forsyth County Tax Map #606898 as is presently constituted.

SECTION 2. This act does not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for prior years.

SECTION 3. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 18th day of May, 2005.

Became law on the date it was ratified.

H.B. 498 **Session Law 2005-52**

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF TAYLORSVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

…

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

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

In the General Assembly read three times and ratified this the 18th day of May, 2005.

Became law on the date it was ratified.

H.B. 843 **Session Law 2005-53**

AN ACT TO AUTHORIZE DUPLIN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and scope. The Duplin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

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

(a2) Administration. A tax levied under this section must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a~~

~~period of thirty 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Distribution and ~~Use~~ use of tax revenue. Except as otherwise provided in this act, Duplin County ~~may~~ shall use the net proceeds of a tax levied under this section in accordance with this subsection. ~~only~~ It shall use at least two-thirds of the funds to promote travel and tourism in Duplin ~~County.~~County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Board of Commissioners, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Duplin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Section 1.1.** Duplin County Tourism Development Authority. (a) Appointment and Membership. When the annual net proceeds of the occupancy tax exceed two hundred thousand dollars ($200,000), the Duplin County Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members'

terms of office, and for the filing of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to the members of the Authority.

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

"**Section 1.2.** Duties. If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then Duplin County shall, on a quarterly basis, remit the net proceeds of the tax to the Tourism Development Authority. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

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

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"§ **153A-155. Uniform provisions for room occupancy taxes.**

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

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

In the General Assembly read three times and ratified this the 18th day of May, 2005.

Became law on the date it was ratified.

H.B. 1028 **Session Law 2005-54**

AN ACT AMENDING THE CHARTER OF THE CITY OF HIGH POINT TO ALLOW THE CITY COUNCIL TO ELECT A MAYOR PRO TEMPORE FROM ITS FULL MEMBERSHIP AND REPEALING CERTAIN ELECTION PROCEDURES TO ALLOW THE GENERAL LAW ON ELECTIONS TO APPLY AND AMENDING THE CHARTER OF THE TOWN OF CLAREMONT TO PROVIDE FOUR-YEAR TERMS FOR THE OFFICE OF MAYOR.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 2.4 of the Charter of the City of High Point, being Chapter 501 of the 1979 Session Laws, as amended by Chapter 223 of the 1987 Session Laws, reads as rewritten:

"Sec. 2.4. Mayor Pro Tempore. At its organizational meeting, the council shall elect from among ~~the two candidates elected to the council at large~~its membership a mayor pro tempore to exercise the functions of mayor whenever the mayor is absent, disabled or unable to discharge the duties of the office of mayor."

SECTION 1.(b) Sections 3.2 through 3.7 of Article III of the Charter of the City of High Point, being Chapter 501 of the 1979 Session Laws, as amended, are repealed.

SECTION 1.(c) This section applies only to the City of High Point.

SECTION 2.(a) Section 2 of Chapter 76 of the Session Laws of 1961 reads as rewritten:

"Sec. 2. ~~The mayor to be elected in May 1961, shall serve for a term of two years or until his successor is duly elected and qualified.~~ The mayor to be elected in 2005 shall serve for a term of four years or until a successor is duly elected and qualified. Thereafter, a mayor shall be elected ~~biennially~~ every four years in the odd-numbered years and ~~his~~ the term of office shall be ~~two~~ four years."

SECTION 2.(b) This section applies only to the Town of Claremont.

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

In the General Assembly read three times and ratified this the 19th day of May, 2005.

Became law on the date it was ratified.

H.B. 277 **Session Law 2005-55**

AN ACT TO PROVIDE FOR FAMILY ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE NEGLECTED OR DEPENDENT AND FOR INVESTIGATIVE ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE ABUSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 reads as rewritten:

"§ **7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in ~~G.S. 14-178 and G.S. 14-179;~~ G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in

a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in ~~G.S. 14-202.1, regardless of the age of the parties;~~ G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances. – Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk. – Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Community-based program. – A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(6) Court. – The district court division of the General Court of Justice.

(7) Court of competent jurisdiction. – A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) ~~"Criminal history" means a~~Criminal history. – A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(9) Dependent juvenile. – A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director. – The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District. – Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. – A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. – A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge. – Any district court judge.

(13) Judicial district. – Any district court district as established by G.S. 7A-133.

(14) Juvenile. – A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(15) Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner. – The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor. – The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts. – The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(19) Safe home. – A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(20) Shelter care. – The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

SECTION 2. G.S. 7B-300 reads as rewritten:

"§ **7B-300. Protective services.**

The director of the department of social services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the ~~investigation and~~ screening of ~~complaints,~~ reports, the performance of an assessment using either a family assessment response or an investigative assessment response, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to child care facilities as defined in G.S. 110-86."

SECTION 3. G.S. 7B-301 reads as rewritten:

"§ **7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.**

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's ~~investigation~~ assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the director shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but

during the course of the ~~investigation~~ assessment there is reason to suspect that sexual abuse has occurred, the director shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report."

SECTION 4. G.S. 7B-302 reads as rewritten:

"§ **7B-302. ~~Investigation~~ Assessment by director; access to confidential information; notification of person making the report.**

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough ~~investigation~~ assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the ~~investigation.~~ assessment. When the report alleges neglect or dependency, the director shall initiate the ~~investigation~~ assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an ~~investigation,~~ assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The ~~investigation~~ assessment and evaluation shall include a visit to the place where the juvenile ~~resides.~~resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the ~~investigation~~ assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an ~~investigation~~ assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the ~~investigation~~ assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective

services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint ~~which~~ that alleges the applicable facts to invoke the jurisdiction of the court. Where the ~~investigation~~ assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the ~~investigation~~ assessment of the ~~complaint~~ report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the ~~investigation~~ assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the ~~investigation of or the provision for~~ assessment or provision of protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for ~~investigation~~ assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services ~~investigation,~~ assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including

whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for ~~investigation~~ assessment purposes without at least one of the following:

(1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.

(2) The permission of the parent or person responsible for the juvenile's care.

(3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.

(4) An order from a court of competent jurisdiction."

SECTION 5. G.S. 7B-303 reads as rewritten:

"§ **7B-303. Interference with ~~investigation.~~ assessment.**

(a) If any person obstructs or interferes with an ~~investigation~~ assessment required by G.S. 7B-302, the director may file a petition naming ~~said~~ that person as respondent and requesting an order directing the respondent to cease ~~such~~ the obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the ~~investigation,~~ assessment; shall include a concise statement of the basis for initiating the assessment, shall specifically describe the conduct alleged to constitute obstruction of or interference with the ~~investigation,~~ assessment; and shall be verified.

(b) For purposes of this section, obstruction of or interference with an ~~investigation~~ assessment means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B-302, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out the duty to ~~investigate.~~ assess the juvenile's condition.

(c) Upon filing of the petition, the court shall schedule a hearing to be held not less than five days after service of the petition and summons on the respondent. Service of the petition and summons and notice of hearing shall be made as provided by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court to be a necessary party. If at the hearing on the petition the court finds by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an ~~investigation~~ assessment required by G.S. 7B-302, the court may order the respondent to cease such obstruction or interference. The burden of proof shall be on the petitioner.

(d) If the director has reason to believe that the juvenile is in need of immediate protection or assistance, the director shall so allege in the petition and may seek an ex parte order from the court. If the court, from the verified petition and any inquiry the court makes of the director, finds probable cause to believe both that the juvenile is at

risk of immediate harm and that the respondent is obstructing or interfering with the director's ability to ~~investigate to determine~~ assess the juvenile's condition, the court may enter an ex parte order directing the respondent to cease ~~such~~ the obstruction or interference. The order shall be limited to provisions necessary to enable the director to conduct an ~~investigation~~ assessment sufficient to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days after the entry of an ex parte order under this subsection, a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order. An order entered under this subsection shall be served on the respondent along with a copy of the petition, summons, and notice of hearing.

(e) The director may be required at a hearing under this section to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency as required by G.S. 7B-301.

(f) An order entered pursuant to this section is enforceable by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

SECTION 6. G.S. 7B-305 reads as rewritten:

"§ **7B-305. Request for review by prosecutor.**

The person making the report shall have five working days, from receipt of the decision of the director of the department of social services not to petition the court, to notify the prosecutor that the person is requesting a review. The prosecutor shall notify the person making the report and the director of the time and place for the review, and the director shall immediately transmit to the prosecutor a copy of ~~the investigation report.~~ a summary of the assessment."

SECTION 7. G.S. 7B-307 reads as rewritten:

"§ **7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services and State Bureau of Investigation.**

(a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services ~~investigation~~ assessment being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

(b) If the director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7B-101 in a child care facility, the director shall immediately so notify the Department of Health and Human Services and, in the case of sexual abuse, the State Bureau of Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the records of the department of social services.

(c) Upon completion of the ~~investigation,~~ assessment, the director shall give the Department written notification of the results of the ~~investigation~~ assessment required by G.S. 7B-302. Upon completion of an ~~investigation~~ assessment of sexual abuse in a child care facility, the director shall also make written notification of the results of the ~~investigation~~ assessment to the State Bureau of Investigation.

The director of the department of social services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission."

SECTION 8. G.S. 7B-308(b) reads as rewritten:

"(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or that person's designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an ~~investigation~~ assessment of the case.

(1) If the ~~investigation~~ assessment reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress or to prevent the juvenile from suffering serious physical injury, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian, or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct the ~~investigation~~ assessment and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator, or that person's designee may ask the prosecutor to review this decision according to the provisions of G.S. 7B-305 and G.S. 7B-306."

SECTION 9. G.S. 7B-309 reads as rewritten:

"§ **7B-309. Immunity of persons reporting and cooperating in an ~~investigation.~~ assessment.**

Anyone who makes a report pursuant to this Article, cooperates with the county department of social services in a protective services ~~inquiry or investigation,~~ assessment, testifies in any judicial proceeding resulting from a protective services report or ~~investigation,~~ assessment, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be

incurred or imposed for that action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed."

SECTION 10. G.S. 7B-404(a) reads as rewritten:

"(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent, or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an ~~investigation~~ assessment required by G.S. 7B-302."

SECTION 11. G.S. 7B-506(h)(3) reads as rewritten:

"(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the ~~investigation~~ assessment conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

SECTION 12. G.S. 108A-14(a)(11) reads as rewritten:

"§ **108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

…

(11) To ~~investigate~~ assess reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes;".

SECTION 13. The Department of Health and Human Services shall continue to assess the alternative response system of child protection as to the impact the system has in child safety, timeliness of response, timeliness of service, and coordination of local human services. The Department shall report the status of its evaluation to the Legislative Study Commission on Children and Youth, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division before the convening of the 2006 Regular Session of the 2005 General Assembly.

SECTION 14. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 12th day of May, 2005.

Became law upon approval of the Governor at 6:18 p.m. on the 23rd day of May, 2005.

S.B. 262 **Session Law 2005-56**

AN ACT ALLOWING A DISTRICT COURT JUDGE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"§ **51-1. Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, either:

(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, a district court judge of this State or of another state, or a magistrate; and

b. With the consequent declaration by the ~~minister~~ minister, district court judge, or magistrate that the persons are husband and wife; or

(2) In accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.

Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. This act becomes effective June 23, 2005, and expires June 27, 2005.

In the General Assembly read three times and ratified this the 12th day of May, 2005.

Became law without signature of the Governor on the 24th day of May, 2005.

H.B. 393 **Session Law 2005-57**

AN ACT AUTHORIZING THE TOWN OF HOLLY SPRINGS TO USE THE PROCEDURE AND AUTHORITY OF CHAPTER 136 OF THE NORTH CAROLINA GENERAL STATUTES IN CONDEMNATION PROCEEDINGS CONCERNING WATER, SEWER, PUBLIC STREETS AND ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Holly Springs, being S.L. 2003-73, is amended by adding a new section to read:

"Section 5.2. **Additional Eminent Domain Powers.** Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property interests (including, without limitation, fee simple title, rights-of-way, and easements) to be used for waterlines and treatment facilities and sewer lines and treatment facilities, and opening, widening, extending, or improving public streets and roads, the town may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina, as now or hereafter amended; provided further, that whenever therein the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to include the 'Town Manager'; Manager', and whenever therein the word 'highway' appears, it is deemed to include 'public works' in accordance with this section, provided further that nothing herein shall be construed to enlarge the power of the town to condemn property already devoted to public use. Provided further, just compensation for the acquisition of fee simple title or a perpetual easement pursuant to this section to be used for street or road right-of-way shall be no less than (i) one dollar ($1.00) per square foot of real property taken, or (ii) the prorated ad valorem tax value of the parent tract, whichever is less. The powers granted by this

section are in addition to and supplementary to those powers granted by any local or general law."

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

In the General Assembly read three times and ratified this the 24th day of May, 2005.

Became law on the date it was ratified.

H.B. 827 **Session Law 2005-58**

AN ACT TO AUTHORIZE THE TOWN OF CASWELL BEACH TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town of Caswell Beach may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town.

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

In the General Assembly read three times and ratified this the 24th day of May, 2005.

Became law on the date it was ratified.

H.B. 941 **Session Law 2005-59**

AN ACT AUTHORIZING THE TOWN OF OCEAN ISLE BEACH TO REMOVE ABANDONED AIRPLANES FROM PUBLIC PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Ocean Isle Beach may by ordinance prohibit the abandonment of airplanes on public property within the Town, and may enforce any ordinance adopted by removing and disposing of abandoned airplanes according to the procedures prescribed in G.S. 160A-303. An abandoned airplane is one that is left on property owned or operated by the Town for longer than 90 days.

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

In the General Assembly read three times and ratified this the 24th day of May, 2005.

Became law on the date it was ratified.

H.B. 1080 **Session Law 2005-60**

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Dortches:

Commencing at a point in the centerline of Hunter Hill Road (SR 1604), said point being approximately 0.64 miles west of the intersection of Hunter Hill Road (SR 1604) and Woodruff Road (SR 1613) as shown on the map hereinafter referred to; thence N 06°33'01"E 30.66 feet to an iron pipe on the northern right-of-way of Hunter Hill Road,

the southwest corner of Belmont N. Woodruff, Deed Book 1178 Page 701; thence along the western line of Woodruff the following three courses and distances: (1) N 06°33'01"E 544.62 feet to an iron pipe; thence (2) N 06°37'51"E 263.63 feet to an iron pipe, and (3) N 06°38'27"E 656.60 feet to a point, the POINT OF BEGINNING; thence continuing along the western line of Woodruff the following four courses and distances: (1) N 06°38'27"E 13.39 feet to an iron pipe; thence (2) N 06°34'29"E 1059.90 feet to an iron pipe; thence (3) N 06°34'52"E 662.80 feet to an iron pipe, and (4) N 06°34'52"E 19.83 feet to a point in the center of Goose Branch; thence along the centerline of Goose Branch the following seventy-nine courses and distances: (1) N 87°14'19"E 38.87 feet to a point; (2) N 33°28'34"E 32.81 feet to a point; (3) N 74°39'06"E 18.43 feet to a point; (4) S 46°47'37"E 18.20 feet to a point; (5) N 54°45'19"E 19.88 feet to a point; (6) S 86°19'12"E 21.51 feet to a point; (7) S 33°16'52"E 16.05 feet to a point; (8) N 72°08'16"E 41.78 feet to a point; (9) N 13°41'19"E 21.24 feet to a point; (10) N 39°26'31"W 16.05 feet to a point; (11) N 46°45'44"W 19.46 feet to a point; (12) N 44°28'36"E 48.64 feet to a point; (13) S 66°11'01"E 32.90 feet to a point; (14) S 81°16'33"E 39.38 feet to a point; (15) N 38°24'32"E 44.68 feet to a point; (16) N 62°37'46"E 16.43 feet to a point; (17) S 47°15'47"E 21.24 feet to a point; (18) N 89°56'55"E 20.61 feet to a point; (19) N 31°35'50"E 39.76 feet to a point; (20) N 61°46'22"E 24.94 feet to a point; (21) S 35°55'59"E 27.77 feet to a point; (22) N 88°26'40"E 50.89 feet to a point; (23) N 46°33'10"E 18.62 feet to a point; (24) N 04°08'24"E 30.38 feet to a point; (25) N 09°57'49"W 21.47 feet to a point; (26) N 27°44'17"E 27.63 feet to a point; (27) N 66°05'32"E 34.06 feet to a point; (28) S 81°56'48"E 12.12 feet to a point; (29) N 62°11'40"E 15.75 feet to a point; (30) S 68°59'05"E 32.18 feet to a point; (31) N 64°55'34"E 1.91 feet to a point; (32) S 42°59'01"E 17.33 feet to a point; (33) S 48°01'00"E 11.80 feet to a point; (34) S 69°50'31"E 27.50 feet to a point; (35) N 65°16'47"E 10.10 feet to a point; (36) N 39°57'09"E 24.45 feet to a point; (37) N 86°51'15"E 27.98 feet to a point; (38) N 45°20'21"E 26.50 feet to a point; (39) S 78°43'02"E 36.19 feet to a point; (40) N 64°12'15"E 17.72 feet to a point; (41) N 31°06'09"E 30.86 feet to a point; (42) N 77°43'15"E 33.45 feet to a point; (43) S 32°11'32"E 58.25 feet to a point; (44) S 62°22'12"E 18.20 feet to a point; (45) N 86°54'18"E 18.49 feet to a point; (46) S 77°46'33"E 58.35 feet to a point; (47) N 45°56'39"E 16.23 feet to a point; (48) N 34°06'59"E 74.53 feet to a point; (49) N 79°31'58"E 22.59 feet to a point; (50) S 61°50'15"E 94.92 feet to a point; (51) S 57°11'52"E 46.55 feet to a point; (52) N 54°50'20"E 53.32 feet to a point; (53) S 53°20'36"E 72.88 feet to a point; (54) S 29°03'53"E 82.40 feet to a point; (55) S 78°44'41"E 53.38 feet to a point; (56) S 65°39'57"E 51.91 feet to a point; (57) N 44°32'31"E 75.98 feet to a point; (58) S 57°18'22"E 43.39 feet to a point; (59) S 19°00'23"W 41.37 feet to a point; (60) S 39°06'27"E 45.69 feet to a point; (61) N 64°53'10"E 182.38 feet to a point; (62) S 47°52'04"E 39.66 feet to a point; (63) S 83°24'18"E 72.61 feet to a point; (64) S 20°04'10"E 76.09 feet to a point; (65) S 59°38'23"E 67.36 feet to a point; (66) S 20°11'24"E 110.52 feet to a point; (67) S 28°59'16"W 53.79 feet to a point; (68) S 68°17'04"W 33.36 feet to a point; (69) N 83°58'11"W 44.01 feet to a point; (70) S 06°34'37"E 62.10 feet to a point; (71) S 15°32'34"E 96.25 feet to a point; (72) S 59°00'23"E 184.89 feet to a point; (73) S 29°36'28"E 68.74 feet to a point; (74) S 31°23'21"E 151.80 feet to a point; (75) S 40°45'24"W 79.33 feet to a point; (76) S 01°10'54"W 53.48 feet to a point; (77) S 25°30'33"E 76.50 feet to a point; (78) S 77°02'09"E 38.59 feet to a point; and (79) N 82°43'48"E 101.89 feet to a point; thence leaving Goose Branch and continuing along the present City Limits the following ten

courses and distances: (1) S 57°59'33"W 167.19 feet to a point; (2) S 60°10'38"W 171.65 feet to a point; (3) S 61°38'32"W 280.10 feet to a point; (4) S 63°45'09"W 280.36 feet to a point; (5) S 65°47'08"W 280.04 feet to a point; (6) S 67°52'28"W 279.93 feet to a point; (7) S 69°48'22"W 237.92 feet to a point; (8) S 71°28'31"W 223.48 feet to a point; (9) S 73°38'21"W 336.09 feet to a point; and (10) S 76°00'20"W 307.00 feet to a point, the POINT OF BEGINNING and containing 70.18 acres as shown on map by MACK GAY ASSOCIATES, P.A., March 22, 2005.

SECTION 2. This act has no effect upon the validity of any liens of the Town of Dortches for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Dortches.

SECTION 3. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 24th day of May, 2005.

Became law on the date it was ratified.

S.B. 62 **Session Law 2005-61**

AN ACT AMENDING THE CHARTER OF THE TOWN OF GIBSON TO EXTEND THE TOWN COMMISSIONERS' TERMS OF OFFICE FROM TWO TO FOUR YEARS AND STAGGERING THOSE TERMS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of the Charter of the Town of Gibson, being Chapter 163 of the Private Laws of 1899, as amended by Chapter 59 of the Private Laws of 1915, reads as rewritten:

"Sec. 2. That the officers of the ~~said town shall consist of a mayor, five commissioners, a constable, a clerk and treasurer and as many policemen as may be necessary in the opinion of the said town for preserving peace and good order therein. That the mayor and five commissioners shall be elected by the qualified voters of said town as hereinafter provided. That the other officers of said incorporation shall be elected by the commissioners. That until the first election under this act shall be held and the officers found to be elected by the same shall have qualified, W.W. Goodwin shall be major and T.G. Gibson , W.E. Caldwell, P.R. Mason, C.L. Gibson and Joshua Gibson shall be commissioners of said incorporation, and that the said commissioners shall elect the clerk and treasurer, constable, and policemen herein provided for, whose terms of office shall expire with the term of the said commissioners.~~Town of Gibson shall be a Mayor, who shall serve for a term of two years, and five commissioners, who shall serve for terms of four years, except as provided in this section. In 2005, the three candidates receiving the highest number of votes for Commissioner shall be elected to four-year terms, and the two candidates receiving the next highest number of votes for Commissioner shall be elected to two-year terms. In 2007, and quadrennially thereafter, two members shall be elected to four-year terms. In 2009, and quadrennially thereafter, three members shall be elected to four-year terms. The Mayor and Town Commissioners shall serve until their successors are elected and qualified pursuant to general law."

SECTION 2. Section 4 of the Charter of the Town of Gibson, being Chapter 163 of the Private Laws of 1899, as amended by Chapter 59 of the Private Laws of 1915, is repealed.

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

In the General Assembly read three times and ratified this the 26th day of May, 2005.

Became law on the date it was ratified.

H.B. 772 **Session Law 2005-62**

AN ACT TO PROHIBIT COMPUTER-ASSISTED REMOTE HUNTING.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.1A. Computer-assisted remote hunting prohibited.**

(a) It is unlawful for a person to engage in computer-assisted remote hunting or provide or operate a facility that allows others to engage in computer-assisted remote hunting if the wild animal or wild bird being hunted or shot is located in this State.

(b) For purposes of this section "computer-assisted remote hunting" means the use of a computer or other device, equipment, or software, to remotely control the aiming and discharging of a firearm or other weapon, that allows a person, not physically present at the location of that firearm or other weapon, to hunt or shoot a wild animal or wild bird."

SECTION 2. G.S. 113-294 is amended by adding a new subsection to read:

"(q) Any person who violates any provision of G.S. 113-291.1A is guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 113-276.3(d) reads as rewritten:

"(d) Any violation of this Subchapter or of any rule adopted by the Wildlife Resources Commission under the authority of this Subchapter which is subject to a penalty greater than the one provided in G.S. 113-135(a)(1) is a suspension offense. Conviction of any of the following suspension offenses results in a suspension for a period of two years:

(1) A violation of G.S. 113-294(b).
(2) A violation of G.S. 113-294(c).
(2a) A violation of G.S. 113-294(c1).
(3) A violation of G.S. 113-294(e).
(4) Repealed by Session Laws 1999-120, s. 2.
(5) A violation of G.S. 113-291.1A.

A conviction of any other suspension offense results in a suspension for a period of one year."

SECTION 4. This act becomes effective December 1, 2005, and applies to acts occurring on or after that date.

In the General Assembly read three times and ratified this the 19th day of May, 2005.

Became law upon approval of the Governor at 1:30 p.m. on the 26th day of May, 2005.

S.B. 510 **Session Law 2005-63**

AN ACT AUTHORIZING THE USE OF PERSONNEL AND FACILITIES AT WESTERN PIEDMONT COMMUNITY COLLEGE IN SUPPORT OF ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(3c) The use of the personnel and facilities of Western Piedmont Community College, with the consent of the trustees of the college, in support of economic development through the operation of the East Campus and its companion facilities as an event venue."

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

In the General Assembly read three times and ratified this the 24th day of May, 2005.

Became law upon approval of the Governor at 1:31 p.m. on the 26th day of May, 2005.

H.B. 761 **Session Law 2005-64**

AN ACT TO AMEND THE MOTOR CARRIER SAFETY STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-382.2(b) reads as rewritten:

"(b) Payment. – When the Department of Crime Control and Public Safety finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle ~~may not be driven for a purpose other than to park the motor vehicle until~~ shall be placed out of service until the motor carrier is in compliance and the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Department of Crime Control and Public Safety for a hearing."

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

In the General Assembly read three times and ratified this the 24th day of May, 2005.

Became law upon approval of the Governor at 1:32 p.m. on the 26th day of May, 2005.

H.B. 231 **Session Law 2005-65**

AN ACT TO REVISE THE POWERS AND DUTIES OF THE STATE CONTROLLER TO CLARIFY THAT THE CONTROLLER MAY CONDUCT COMPLIANCE REVIEWS OF STATE AGENCIES AND TO EXEMPT THE WORKING PAPERS FROM THOSE REVIEWS FROM THE PUBLIC RECORDS LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-426.39(1) reads as rewritten:

"§ **143B-426.39. Powers and duties of the State Controller.**

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds. The State Controller may elect to review a State agency's compliance with prescribed uniform State accounting system standards, as well as applicable legal and constitutional requirements related to compliance with such standards."

SECTION 2. Part 28 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.39B. Compliance review work papers not public records.**

Work papers and other supportive material created as a result of a compliance review conducted under G.S. 143B-426.39(1) are not public records under Chapter 132 of the General Statutes. The State Controller shall make all work papers and other supportive materials available to the State Auditor. The State Controller may, unless otherwise prohibited by law, make work papers available for inspection by duly authorized representatives of the State and federal governments in connection with matters officially before them. Any report resulting from a compliance review is a public record under Chapter 132 of the General Statutes."

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

In the General Assembly read three times and ratified this the 19th day of May, 2005.

Became law upon approval of the Governor at 1:35 p.m. on the 26th day of May, 2005.

S.B. 572 **Session Law 2005-66**

AN ACT TO CREATE A LICENSURE CATEGORY FOR ASSISTED LIVING COMMUNITIES THAT SERVE ONLY ELDERLY ADULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-2(a)(1d) reads as rewritten:

"§ **131D-2. Licensing of adult care homes for the aged and disabled.**

(a) The following definitions will apply in the interpretation of this section:

…

(1d) "Assisted living residence" means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. Effective ~~October 1, 1995,~~ October 1, 2005, there are two types of assisted living residences: adult care homes and ~~group homes for developmentally disabled adults.~~adult care homes that serve only elderly persons. As used in this section, "elderly person" means:

a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or

b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

Effective July 1, 1996, there is a third type, multiunit assisted housing with services."

SECTION 2. The Medical Care Commission shall adopt rules to implement this act.

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

In the General Assembly read three times and ratified this the 18th day of May, 2005.

Became law upon approval of the Governor at 1:37 p.m. on the 26th day of May, 2005.

H.B. 1015 **Session Law 2005-67**

AN ACT TO AUTHORIZE THE CLERK OF SUPERIOR COURT TO ORDER MEDIATION IN MATTERS WITHIN THE CLERK'S JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.**

(a) Purpose. – The General Assembly finds that the clerk of superior court in the General Court of Justice should have the discretion and authority to order that mediation be conducted in matters within the clerk's jurisdiction in order to facilitate a more economical, efficient, and satisfactory resolution of those matters.

(b) Enabling Authority. – The clerk of superior court may order that mediation be conducted in any matter in which the clerk has exclusive or original jurisdiction, except for matters under Chapters 45 and 48 of the General Statutes and except in matters in

which the jurisdiction of the clerk is ancillary. The Supreme Court may adopt rules to implement this section. Such mediations shall be conducted pursuant to this section and the Supreme Court rules as adopted.

(c) Attendance. – In those matters ordered to mediation pursuant to this section, the following persons or entities, along with their attorneys, may be ordered by the clerk to attend the mediation:

(1) Named parties.

(2) Interested persons, meaning persons or entities who have a right, interest, or claim in the matter; heirs or devisees in matters under Chapter 28A of the General Statutes, next of kin under Chapter 35A of the General Statutes, and other persons or entities as the clerk deems necessary for the adjudication of the matter. The meaning of "interested person" may vary according to the issues involved in the matter.

(3) Nonparty participants, meaning any other person or entity identified by the clerk as possessing useful information about the matter and whose attendance would be beneficial to the mediation.

(4) Fiduciaries, meaning persons or entities who serve as fiduciaries, as that term is defined by G.S. 36A-22.1, of named parties, interested persons, or nonparty participants.

Any person or entity ordered to attend a mediation shall be notified of its date, time, and location and shall attend unless excused by rules of the Supreme Court or by order of the clerk. No one attending the mediation shall be required to make a settlement offer or demand that it deems contrary to its best interests.

(d) Selection of Mediator. – Persons ordered to mediation pursuant to this section have the right to designate a mediator in accordance with rules promulgated by the Supreme Court implementing this section. Upon failure of those persons to agree upon a designation within the time established by rules of the Supreme Court, a mediator certified by the Dispute Resolution Commission pursuant to those rules shall be appointed by the clerk.

(e) Immunity. – Mediators acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators may be disciplined in accordance with procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(f) Costs of Mediation. – Costs of mediation under this section shall be borne by the named parties, interested persons, and fiduciaries ordered to attend the mediation. The rules adopted by the Supreme Court implementing this section shall set out the manner in which costs shall be paid and a method by which an opportunity to participate without cost shall be afforded to persons found by the clerk to be unable to pay their share of the costs of mediation. Costs may only be assessed against the estate of a decedent, the estate of an adjudicated or alleged incompetent, a trust corpus, or against a fiduciary upon the entry of a written order making specific findings of fact justifying the taxing of costs.

(g) Inadmissibility of Negotiations. – Evidence of statements made or conduct occurring during a mediation conducted pursuant to this section, whether attributable to any participant, mediator, expert, or neutral observer, shall not be subject to discovery and shall be inadmissible in any proceeding in the matter or other civil actions on the same claim, except in:

(1) Proceedings for sanctions pursuant to this section;

(2) Proceedings to enforce or rescind a written and signed settlement agreement;

(3) Incompetency, guardianship, or estate proceedings in which a mediated agreement is presented to the clerk;

(4) Disciplinary proceedings before the North Carolina State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(5) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in mediation.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

(h) Testimony. – No mediator or neutral observer shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to the mediation in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the matter except to attest to the signing of any agreements reached in mediation, and except in:

(1) Proceedings for sanctions pursuant to this section;

(2) Disciplinary proceedings before the North Carolina State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(3) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the parties.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter.

(j) Sanctions. – The clerk may sanction any person ordered to attend a mediation conducted pursuant to this section and rules of the Supreme Court who, without good cause, fails to attend the mediation, by imposing an appropriate monetary sanction, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference. If the clerk imposes sanctions, the clerk shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions is reviewable by the superior court in accordance with G.S. 1-301.2 and G.S. 1-301.3, as applicable, and thereafter by the appellate courts in accordance with G.S. 7A-38.1(g).

(k) Authority to Supplement Procedural Details. – The clerk of superior court shall make all those orders just and necessary to safeguard the interests of all persons

and may supplement all necessary procedural details not inconsistent with rules adopted by the Supreme Court implementing this section."

SECTION 2. G.S. 35A-1108 reads as rewritten:

"§ **35A-1108. Issuance of notice.**

(a) Within five days after filing of the petition, the clerk shall issue a written notice of the date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor more than 30 days after service of the notice and petition on the respondent, unless the clerk extends the time for good ~~cause or~~ cause, for preparation of a multidisciplinary evaluation as provided in ~~G.S. 35A-1111.~~ G.S. 35A-1111, or for the completion of a mediation.

(b) If a multidisciplinary evaluation or mediation is ordered after a notice of hearing has been issued, the clerk may extend the time for hearing and issue a notice to the parties that the hearing has been continued, the reason therefor, and the date, time, and place of the new hearing, which shall not be less than 10 days nor more than 30 days after service of such notice on the respondent.

(c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1, Rule 5, Rules of Civil Procedure, unless the clerk orders otherwise."

SECTION 3. G.S. 35A-1116 is amended by adding a new subsection to read:

"(c1) Mediator fees and other costs associated with mediation shall be assessed in accordance with G.S. 7A-38.3B."

SECTION 4. G.S. 46-27 reads as rewritten:

"§ **46-27. Sale of land required for public use on cotenant's petition.**

When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B."

SECTION 5. This act is effective when it becomes law and applies to all matters pending before a clerk of superior court on, or filed with the clerk after, the date the Supreme Court adopts rules implementing this act.

In the General Assembly read three times and ratified this the 23rd day of May, 2005.

Became law upon approval of the Governor at 1:37 p.m. on the 26th day of May, 2005.

S.B. 525 **Session Law 2005-68**

AN ACT RELATING TO NASCAR HALL OF FAME FINANCING.

Whereas, the General Assembly has, pursuant to Section 6(a) of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, previously authorized Mecklenburg County to levy an occupancy tax at a rate not to exceed 6%; and

Whereas, the General Assembly has not previously authorized any local government to levy an occupancy tax in excess of 6%; and

Whereas, the State of North Carolina and the City of Charlotte now have a "once-in-a-lifetime" opportunity to potentially locate a unique national tourism facility (i.e., the NASCAR Hall of Fame Museum) in Charlotte, North Carolina – a facility that will have a significant positive impact on the economy of the Charlotte region and the State of North Carolina; and

Whereas, in order to facilitate the financing of the capital costs of the NASCAR Hall of Fame Museum, the General Assembly is, for this unique situation and opportunity, willing to authorize a 2% occupancy tax that is in addition to the previously authorized 6% occupancy tax; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. (a) Authorization and Scope. – Upon receiving written confirmation from the National Association of Stock Car Auto Racing, Inc., (NASCAR) that it will license or otherwise legally authorize the location of the NASCAR Hall of Fame Museum facility in Charlotte, North Carolina, the Mecklenburg County Board of Commissioners may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any accommodation subject to the tax under Section 6 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws. The tax authorized by this section is in addition to any other State or local sales and use tax and any other State or local occupancy tax authorized by law.

SECTION 1.(b) Administration. – Except as otherwise provided in this act, a tax levied under this section shall be levied, administered, and collected as provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402. The penalties provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The definitions in G.S. 105-164.3 and in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to this act insofar as they are not inconsistent with this act.

SECTION 1.(d) Relationship to the Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 shall apply to this act insofar as they are not inconsistent with the provisions of this act. All other provisions of Article 5 and Article 9 of Subchapter I, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act, shall be applicable to this act and administered by the local administrative authority unless the provisions are inconsistent with the provisions of this act. It is the intention of this act that the provisions of this act and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized. The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 of the General Statutes, shall be applicable in like manner to the taxes authorized to be levied and collected under this act, to the extent that the same are not inconsistent with any provision of this act.

SECTION 1.(e) Repeal. – A tax levied under this act shall only be repealed in accordance with this subsection. The Mecklenburg County Board of Commissioners shall repeal the tax effective the earlier of July 1, 2038, or July 1 after the date of final

satisfaction, by payment or other irrevocable defeasance, of any debt instruments or obligations that were issued by the City of Charlotte or a related special purpose entity in connection with the financing or refinancing of the NASCAR Hall of Fame Museum facility. Effective upon the repeal of the tax in accordance with this subsection, subsection (a) of this section is repealed, and any tax levied under that subsection shall be rescinded. Repeal of a tax levied under this act does not affect a liability for a tax that has attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

SECTION 1.(f) Distribution and Use of Proceeds. – The local administrative authority, acting on its own behalf or as agent for each taxing entity shall distribute the proceeds of the tax levied pursuant to this act to the City of Charlotte. The City of Charlotte shall use the proceeds only for the acquisition, construction, repair, maintenance, and financing of a NASCAR Hall of Fame Museum facility and an ancillary and adjacent NASCAR/convention center ballroom facility. The Charlotte Regional Visitors Authority shall have all the powers and duties enumerated in Section 5.23 of the Charter of the City of Charlotte (S.L. 2000-26 as amended by S.L. 2001-402 and S.L. 2004-14) with respect to facilities constructed pursuant to this act.

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

In the General Assembly read three times and ratified this the 26th day of May, 2005.

Became law on the date it was ratified.

H.B. 236 **Session Law 2005-69**

AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER LANDS ACQUIRED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"§ **104-7. Acquisition of lands by the United States for ~~public buildings;~~ customhouses, courthouses, post offices, forts, arsenals, or armories; cession of jurisdiction; exemption from taxation.**

(a) The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the ~~State required for the sites~~ State that either is:

(1) Required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres; or ~~other public buildings whatever, or for any other purposes of the government.~~

(2) To be added to Fort Bragg, Pope Air Force Base, Camp Lejeune, New River Marine Corps Air Station, Seymour Johnson Air Force Base, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, or the United States Coast Guard Air Station at Elizabeth City. Any of the land to be added to a military base named in this subdivision shall be contiguous to and within a 25-mile radius of the military base for which the property is acquired.

(b) Exclusive jurisdiction in and over any land ~~so~~ acquired by the United States ~~shall be and the same~~ with the consent of the State under subsection (a) of this section is

hereby ceded to the United States for all purposes for which the United States requests cession of jurisdiction except that jurisdiction in and over these lands with respect to: (i) the service ~~upon such sites~~ of all civil and criminal process of the courts of this ~~State;~~ State, (ii) the concurrent power to enforce the criminal law, (iii) the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources, and (iv) the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property is reserved to the State. ~~but the~~ Cession of jurisdiction ~~so ceded~~ shall continue ~~no longer than~~ only so long as the ~~said~~ United States ~~shall own such lands.~~ owns the land.

(c) The jurisdiction ceded shall not vest until the United States ~~shall have~~has acquired title to ~~said lands~~ the land by purchase, condemnation, or ~~otherwise.~~otherwise; accepted the cession of jurisdiction in writing; and filed a certified copy of the acceptance in the office of the register of deeds in the county or counties in which the land is located. The acceptance of jurisdiction shall be made by an authorized official of the United States and shall include a precise description of the land involved and a statement of the extent to which cession of jurisdiction is accepted. The register of deeds shall record the acceptance of jurisdiction and index it in both the grantor and the grantee index under the name of the United States and, if title to the land over which jurisdiction is ceded is vested in any entity other than the United States, then the register of deeds shall also index the acceptance of jurisdiction in both the grantor and the grantee index under the name of that entity.

(d) So long as ~~the said lands shall remain~~ land acquired with the consent of the State under subsection (a) of this section remains the property of the United ~~States when acquired as aforesaid, and no longer, the same shall be and continue~~ States, and no longer, the land shall be exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges ~~which~~ that may be levied or imposed under the authority of this State.

(e) Persons residing on lands in the State for which any jurisdiction has been ceded under this section shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction to the United States."

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

In the General Assembly read three times and ratified this the 19th day of May, 2005.

Became law upon approval of the Governor at 4:15 p.m. on the 27th day of May, 2005.

H.B. 869 **Session Law 2005-70**

AN ACT TO CLARIFY AND AMEND THE CONFLICT OF INTEREST LAW FOR PUBLIC HOSPITALS AND TO EXTEND A SPECIAL DEADLINE FOR EXEMPT ADULT HOUSING FACILITIES LOCATED IN A DOWNTOWN AREA AND BEING RELOCATED DUE TO A MAJOR ECONOMIC DEVELOPMENT PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-14.2 reads as rewritten:

"§ **131E-14.2. Conflict of interest.**

(a) No member of the board of directors or employee of a public hospital, as defined in G.S. 159-39(a), or that person's spouse shall do either of the following:

(1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility.

(2) Have any direct interest ~~interest, direct or indirect,~~ in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility, except an employment contract for an employee. This restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business provided that the contract, undertaking, or other transaction shall be authorized by the board by specific resolution on which no director having ~~an interest, direct or indirect, shall vote.~~direct interest shall vote.

(b) The fact that a person or that person's spouse owns ten percent (10%) or less stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of that corporation or other business entity does not make the person have ~~an "interest, direct or indirect"~~ a "direct interest" as this phrase is used in subsection (a) of this section; provided that, in order for the exception to apply, the contract, undertaking, or other transaction shall be authorized by the board of directors by specific resolution on which no director or employee having an interest, direct or indirect, shall vote.

(c) If a member of the board of directors or an employee of a public hospital or that person's spouse owns or controls an interest, direct or indirect, in any property included or planned to be included in any hospital facility, the member of the board of directors or the employee shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board. Failure to disclose shall constitute misconduct in office and shall be grounds for removal.

(c1) Subsection (a) of this section shall not apply if the director or employee is not involved in making or administering the contract. A director or employee is involved in administering a contract if the director or employee oversees the performance of or interprets the contract. A director or employee is involved in making a contract if the director or employee participates in the development of specifications or terms or in the preparation or award of the contract. A director or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract. A director is also involved in making a contract if the board of directors takes action on the contract, whether or not the director actually participates in that action, unless the contract is approved under an exception to this section under which the director is allowed to benefit and is prohibited from voting.

(d) Subsection (a) of this section shall not apply to any member of the board of directors of a public hospital if (i) the undertaking or contract or series of undertakings or contracts between the public hospital and one of its officials is approved by specific resolution of the ~~governing body~~ board adopted in an open and public meeting and recorded in its ~~minutes~~ minutes; (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote; and (iii) the amount does not exceed twelve thousand five hundred dollars ($12,500) for medically related services and twenty-five thousand dollars ($25,000) for other goods or

services within a 12-month period; ~~and (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote.~~or the contract is for medically related services that are provided by a director who serves on the board as an ex officio representative of the hospital medical staff pursuant to a hospital bylaw adopted prior to January 1, 2005, or that are provided by the spouse of that director.

(e) Subsection (a) of this section shall not apply to any employment relationship between a public hospital and the spouse of a member of the board of directors of the public hospital.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A public hospital that is a party to the contract may request approval to continue contracts under this subsection from the chairman of the Local Government Commission. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare."

SECTION 2. Section 3(a) of S.L. 2004-2 reads as rewritten:

"**SECTION 3.(a)** In applying to a "specially impacted adult care home", Section 11.69(b2) of S.L. 1997-443, as enacted by Section 3 of S.L. 2001-234, "June 1, 2004" shall be read as "~~June 1, 2005~~ June 1, 2006", and "December 1, 2004" shall be read as "~~December 1, 2005~~ December 1, 2006".

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

In the General Assembly read three times and ratified this the 31st day of May, 2005.

Became law upon approval of the Governor at 7:15 p.m. on the 31st day of May, 2005.

H.B. 986 **Session Law 2005-71**

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE CITIES OF GREENVILLE AND ELIZABETH CITY AND THE TOWNS OF AYDEN, SURF CITY, AND WINDSOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

…

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina,

Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Surf City, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

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

In the General Assembly read three times and ratified this the 1st day of June, 2005.

Became law on the date it was ratified.

S.B. 867 **Session Law 2005-72**

AN ACT TO INCREASE THE PERIOD OF TIME OVER WHICH AN INTERLOCAL AGREEMENT REGARDING AN INDUSTRIAL OR COMMERCIAL PARK MAY REMAIN IN EFFECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.4(b) reads as rewritten:

"(b) Any undertaking entered into pursuant to this section may be for that period that is agreed to by the participating local governments, up to a maximum of ~~40~~ 99 years."

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

In the General Assembly read three times and ratified this the 26th day of May, 2005.

Became law upon approval of the Governor at 9:45 a.m. on the 2nd day of June, 2005.

H.B. 570 **Session Law 2005-73**

AN ACT TO PROVIDE FOR THE PROFIT DISTRIBUTION FROM THE SALES OF ALCOHOLIC BEVERAGES BY THE KINGS MOUNTAIN ALCOHOLIC BEVERAGE CONTROL BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 832 of the 1969 Session Laws reads as rewritten:

"**Section 1.** The provisions of this Act shall apply to any incorporated municipality in Rockingham, Cleveland and Stokes ~~Counties~~ Counties, but excludes the City of Kings Mountain in Cleveland County, which have and maintain an organized municipal police force of one or more full-time officers, who each receive an annual salary, paid monthly or weekly.

The State Board of Alcoholic Control is hereby empowered to determine upon application of the governing body of any municipality, whether such municipality comes within the provisions of this Section, and any such determination shall be solely within the discretion of the State Board of Alcoholic Control. The State Board of Alcoholic Control shall supply the application forms."

SECTION 2. This act does not affect the rights or liabilities of the City of Kings Mountain arising under Chapter 832 of the 1969 Session Laws prior to the amendment of Chapter 832 of the 1969 Session Laws by this act.

SECTION 3. The Kings Mountain Alcoholic Beverage Control Board constitutes a duly created Alcoholic Beverage Control Board and shall be subject to the provisions of Chapter 18B of the General Statutes from the effective date of this act. All revenues shall be distributed in accordance with G.S. 18B-805.

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

In the General Assembly read three times and ratified this the 2nd day of June, 2005.

Became law on the date it was ratified.

S.B. 116 Session Law 2005-74

AN ACT TO ADOPT THE VENUS FLYTRAP AS THE OFFICIAL CARNIVOROUS PLANT OF THE STATE OF NORTH CAROLINA.

Whereas, the Venus flytrap is a small flowering perennial plant that grows in boggy areas of the Southeastern United States; and

Whereas, the Venus flytrap is unique in that it is a carnivorous plant characterized by leaves with hinged lobes that spring shut when stimulated by insects; and

Whereas, the Venus flytrap is native to the Coastal Plain of North Carolina and is legally protected by the State as a species of special concern; and

Whereas, the Venus flytrap deserves to be adopted as the official carnivorous plant of the State of North Carolina because it is a mysterious and wonderful natural resource; Now, therefore,

The General Assembly of North Carolina enacts:

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

"§ **145-22. State carnivorous plant.**

The Venus flytrap (Dionaea muscipula) is adopted as the official carnivorous plant of the State of North Carolina."

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

In the General Assembly read three times and ratified this the 1st day of June, 2005.

Became law upon approval of the Governor at 10:16 a.m. on the 7th day of June, 2005.

S.B. 763 Session Law 2005-75

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FIFTEEN THOUSAND NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-4(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The~~ Except for any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(6) Pay a nonrefundable fee of fifty dollars ($50.00)."

SECTION 2. This act becomes effective January 1, 2006, and applies to notary public applications filed on or after that date.

In the General Assembly read three times and ratified this the 1st day of June, 2005.

Became law upon approval of the Governor at 10:40 a.m. on the 7th day of June, 2005.

H.B. 1206 **Session Law 2005-76**

AN ACT TO ALLOW THE USE OF DOMESTICALLY PROPAGATED WATERFOWL AND GAME BIRDS IN DOG TRAINING UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1(d) reads as rewritten:

"(d) In accordance with governing rules of the Wildlife Resources Commission imposing further restrictions that may be necessary, hunters may conduct field trials with dogs in areas and at times authorized with the use of approved weapons and ammunition. The Wildlife Resources Commission may authorize organized retriever field trials, utilizing domestically raised ~~pheasants or waterfowl,~~ waterfowl and game birds, to be held under its permit."

SECTION 2. G.S. 113-291.1(d1) reads as rewritten:

"(d1) Except in areas closed to protect sensitive wildlife populations, and subject to conditions and restrictions contained in rules of the Wildlife Resources Commission, hunters may train dogs during the closed season:

(1) With the use of ~~approved~~ weapons and ~~ammunition; and~~ ammunition approved by the Wildlife Resources Commission;

(2) If reasonable control is exercised to prevent the dogs from running unsupervised at large and from killing wild animals and wild ~~birds.~~ birds;

(3) On land owned or leased by the dog trainer or upon which the person has written permission to train dogs; and

(4) Using domestically raised waterfowl and game birds, provided the birds are marked and sources are documented as required by the Wildlife Resources Commission."

SECTION 3. At its first meeting after this act becomes law, the Wildlife Resources Commission shall initiate rule making to implement provisions of this act to regulate dog training. Until the rules become effective, persons may participate in dog training activities for retrievers and bird dogs as permitted by G.S. 113-291.1(d1), as amended by this act, using shotguns and nontoxic shot of #4 size or smaller and using only domestically propagated waterfowl and game birds that have been obtained and marked as currently set forth in 15A NCAC 10B.0114.

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

In the General Assembly read three times and ratified this the 1st day of June, 2005.

Became law upon approval of the Governor at 10:41 a.m. on the 7th day of June, 2005.

H.B. 583 **Session Law 2005-77**

AN ACT DESIGNATING THE COMMUNITY COLLEGES SYSTEM OFFICE AS THE PRIMARY LEAD AGENCY FOR DELIVERING WORKFORCE DEVELOPMENT TRAINING, LITERACY, AND ADULT EDUCATION IN THE STATE, AND TO ALLOW INTELLECTUALLY GIFTED YOUTHS TO ATTEND COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-1 reads as rewritten:

"§ **115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the youth development center to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission.

The Community Colleges System Office is designated as the primary lead agency for delivering workforce development training, adult literacy training, and adult education programs in the State."

SECTION 2. Section 4 of S.L. 2001-312, as amended by Section 76 of S.L. 2001-487, reads as rewritten:

"**SECTION 4.** Section 2 of this act is effective when it becomes law, and shall apply ~~to~~ beginning with the 2001-2002 academic year. Section 2 of this act expires September 1, ~~2004.~~ 2008. The remainder of this act is effective when it becomes law."

SECTION 3. G.S. 115D-1.1, as reenacted by Section 2 of this act, reads as rewritten:

"§ **115D-1.1. Discretion in admissions.**

(a) Notwithstanding G.S. 115D-1, a student under the age of 16 may enroll in a community college if the following conditions are met:

(1) The president of the community college or the president's designee finds, based on criteria established by the State Board of Community Colleges, that the student is intellectually gifted and that the student has the maturity to justify admission to the community college; and

(2) One of the following persons approves the student's enrollment in a community college:

a. The local board of education, or the board's designee, for the local school administrative unit in which the student is domiciled or is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the student is enrolled.

c. The person who provides the academic instruction in the home school in which the student is enrolled.

d. The designee of the board of directors of the charter school in which the student is enrolled.

e. The administrator of the college or university where the student is enrolled.

(b) The State Board of Community Colleges, in consultation with the Department of Public Instruction, shall adopt rules to implement this section."

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

In the General Assembly read three times and ratified this the 31st day of May, 2005.

Became law upon approval of the Governor at 10:42 a.m. on the 7th day of June, 2005.

S.B. 884 **Session Law 2005-78**

AN ACT RECOGNIZING THE SEAGROVE AREA AS THE BIRTHPLACE OF NORTH CAROLINA TRADITIONAL POTTERY.

Whereas, the art of crafting traditional pottery in North Carolina began around 1750 in the Seagrove area, which today includes portions of Randolph, Chatham, Moore, and Montgomery Counties; and

Whereas, this craft has been carried on for 200 years and, in some cases, by people who represent the eighth and ninth generation of potters in their families; and

Whereas, early families of the Seagrove area associated with North Carolina traditional pottery included the Chriscoe, Cole, Craven, Luck, McNeill, Owen, and Teague families; and

Whereas, the pottery craft is a tradition that encompasses both aesthetic and utilitarian elements in its design; and

Whereas, the annual Seagrove Pottery Festival has become the premier traditional pottery event in the State; and

Whereas, during the festival, thousands of people are drawn to pottery displays, demonstrations of pottery making, and the pottery auction; and

Whereas, plans have been made to establish the Museum of North Carolina Traditional Pottery to preserve and perpetuate the history and tradition of North Carolina traditional pottery; and

Whereas the North Carolina Pottery Museum was established in 1998 to promote an awareness of the history and heritage of North Carolina pottery making traditions; and

Whereas, Seagrove is considered the State's pottery capital; and

Whereas, it is fitting to recognize the Seagrove area as the birthplace of North Carolina traditional pottery; Now, therefore,

The General Assembly of North Carolina enacts:

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

"§ **145-23. State birthplace of traditional pottery.**

The Seagrove area, including portions of Randolph, Chatham, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery."

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

In the General Assembly read three times and ratified this the 2nd day of June, 2005.

Became law upon approval of the Governor at 10:45 a.m. on the 7th day of June, 2005.

H.B. 631 **Session Law 2005-79**

AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF MAGGIE VALLEY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

…

~~(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.~~

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

SECTION 2. This act applies to the Town of Maggie Valley only.

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

In the General Assembly read three times and ratified this the 7th day of June, 2005.

Became law on the date it was ratified.

S.B. 368 **Session Law 2005-80**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE FRANKLIN COUNTY BOARD OF EDUCATION FROM PARTISAN TO NONPARTISAN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6(b) of Chapter 341 of the 1993 Session Laws reads as rewritten:

"(b) The members of the Permanent Board shall be elected for a term of four years in ~~partisan~~ nonpartisan elections held at the time of the ~~general election~~ regular primary for county offices, ~~in the same manner as elections for county officers, including primary elections if required.~~ with the results determined under the election and runoff election method as provided under G.S. 163-293. The runoff election, if needed, shall be at the same time as the second primary is scheduled.~~The primary elections shall be held on the dates provided by law for county elections.~~ The filing period shall be the same as for county officers elected on a partisan basis. Duly elected members of the Permanent Board shall take office the first Monday of December immediately following their election and shall take the oath of office prescribed in Article VI, Section 7 of the Constitution. Upon the members of the Permanent Board being installed, the Permanent Board shall replace the Merged Board and shall assume all of the duties, powers, assets, and liabilities of the Merged Board as provided for in Section 5(d) of this act and the Merged Board shall cease to exist and the terms of office of the members of the Merged Board shall end."

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

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law on the date it was ratified.

H.B. 940 **Session Law 2005-81**

AN ACT AUTHORIZING THE TOWNS OF AYDEN, LELAND, AND PINEVILLE TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE TOWNS' OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 1999-58, as amended by S.L. 2000-33, S.L. 2000-38, S.L. 2001-107, S.L. 2003-77, and S.L. 2003-80, reads as rewritten:

"Section 2. This act applies to the Towns of Ayden, Leland, and Pineville, and to the Cities of Durham, Gastonia, High Point, Lexington, Monroe, Roanoke Rapids, Rocky Mount, and Winston-Salem only."

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

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law on the date it was ratified.

S.B. 844 **Session Law 2005-82**

AN ACT TO AMEND THE LAW REGARDING MANAGED HUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-264(d) reads as rewritten:

"(d) The Wildlife Resources Commission may schedule managed hunts for any species of wildlife to be held on game lands. Participants in such hunts shall be selected at random by ~~computer from properly licensed applicants.~~ computer. The Wildlife Resources Commission may require by rule that an applicant 16 years of age or older have the required hunting license before the drawing for the hunt, and that an applicant less than 16 years of age apply as a member of a party that includes a properly licensed adult if the young applicant does not have the proper hunting license. When licenses are required prior to the drawing, all applications shall be screened for compliance. A nonrefundable fee of five dollars ($5.00) will be required of each applicant to defray the cost of processing the applications."

SECTION 2. G.S. 113-291.2(a) reads as rewritten:

"(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions.

Unless modified by rules of the Wildlife Resources Commission, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for migratory game birds in North Carolina must be followed, and a violation of the applicable federal rules is hereby made unlawful. When

the applicable federal rules require that the State limit participation in seasons and/or bag limits for migratory game birds, the Wildlife Resources Commission may schedule managed hunts for migratory game birds. Participants in such hunts shall be selected at random by ~~computer from properly licensed applicants, and each applicant shall provide proof satisfactory to the Wildlife Resources Commission that the applicant is the lawful holder of a North Carolina hunting license that has the applicable migratory game bird hunting privilege.~~ computer, and each applicant 16 years of age or older shall have the required general hunting license and the waterfowl hunting license prior to the drawing for the managed hunt. Each applicant under 16 years of age shall either have the required general hunting license and the waterfowl hunting license or shall apply as a member of a party that includes a properly licensed adult. All applications for managed waterfowl hunts shall be screened prior to the drawing for compliance with these requirements. A nonrefundable fee of ten dollars ($10.00) shall be required of each applicant to defray the cost of processing the applications.

Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season."

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

In the General Assembly read three times and ratified this the 9th day of June, 2005.

Became law upon approval of the Governor at 7:37 p.m. on the 14th day of June, 2005.

H.B. 916 **Session Law 2005-83**

AN ACT TO EXTEND THE SUNSET FROM THE LAW EXEMPTING FROM PRIOR AUTHORIZATION REQUIREMENTS FOR PRESCRIPTION DRUGS UNDER THE MEDICAID PROGRAM ANTIHEMOPHILIC DRUGS PRESCRIBED FOR THE TREATMENT OF HEMOPHILIA AND BLOOD DISORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2003-179 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and expires July 1, ~~2006.~~2009."

SECTION 2. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 8th day of June, 2005.

Became law upon approval of the Governor at 7:39 p.m. on the 14th day of June, 2005.

S.B. 206 **Session Law 2005-84**

AN ACT TO CLARIFY THE CORPORATE LIMITS OF THE TOWN OF SALEMBURG AND TO VALIDATE ELECTIONS AND ACTS OF THE TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.1 of the Charter of the Town of Salemburg, being Chapter 104, Session Laws of 1967, as amended by an annexation ordinance in 1977, reads as rewritten:

"Section 2.1. Existing Corporate Boundaries. The corporate boundaries of the Town of Salemburg shall be as follows until changed in accordance with law:

~~"Being located in the County of Sampson, and described by metes and bounds as follows: BEGINNING at a stake and a point in the center of N. C. Highway No. 242, said stake and point being located South 12 degrees 18 minutes West, 2750 feet from the center point of the intersection of College Street and Main Street in the Town of Salemburg; thence South 76 degrees East, 1989.5 feet to a stake; thence North 14 degrees East, 1612 feet to a stake in the center of Laurel Lake Road; thence the same course (North 14 degrees East) 1809 feet to a stake in the center of the Clinton-Salemburg Road; thence the same course (North 14 degrees East) 2579 feet to a stake; thence North 76 degrees West, 210.12 feet to a stake in the center of a road known as "Cemetery Road"; thence the same course (North 76 degrees West) 1923 feet to a stake in the center of N. C. Highway No. 242 leading to Dunn, North Carolina; thence the same course (North 76 degrees West) 1866.88 feet to a stake; thence South 14 degrees West 1032 feet to a stake in the center of Pine Street; thence the same course (South 14 degrees West) 2780.19 feet to a stake in the center of County Road No. 1233 which leads from Salemburg to Autryville; thence the same course (South 14 degrees West) 2187.81 feet to a stake; thence South 76 degrees East 1299 feet to a stake in the center of Fayetteville Street; thence the same course (South 76 degrees East) 711.5 feet to a stake in the center of N. C. Highway No. 242; the beginning point; said description fully describing by metes and bounds the outside boundaries of the Town of Salemburg, North Carolina.~~

"BEGINNING at a stake located on the Southwestern side of N. C. Highway 242, which stake is located North 79 degrees 28 minutes 27 seconds West 231.98 feet from the CONTROL CORNER, NC GRID COORDINATES (NAD 83): N=458,194.08 feet, E=2,148,302.85 feet, COMBINED GRID CORRECTION FACTOR = 0.9998786; and runs thence from said Beginning Point North 79 degrees 28 minutes 27 seconds West 194.13 feet; thence North 79 degrees 28 minutes 27 seconds West 288.77 feet to an RRS in the centerline of South Fayetteville Street; thence North 79 degrees 28 minutes 27 seconds West 1,295.62 feet; thence North 10 degrees 31 minutes 33 seconds East 1,769.08 feet to a stake; thence South 82 degrees 32 minutes 15 seconds West 85.34 feet; thence South 83 degrees 00 minutes 38 seconds West 403.42 feet; thence South 83 degrees 48 minutes 38 seconds West 112.41 feet; thence South 86 degrees 27 minutes 38 seconds West 124.51 feet; thence North 89 degrees 22 minutes 22 seconds West 128.04 feet; thence North 85 degrees 44 minutes 22 seconds West 124.86 feet; thence North 82 degrees 27 minutes 22 seconds West 128.87 feet; thence North 77 degrees 42 minutes 22 seconds West 131.33 feet; thence North 73 degrees 44 minutes 22 seconds West 127.14 feet; thence North 70 degrees 09 minutes 22 seconds West 121.39 feet; thence North 67 degrees 47 minutes 22 seconds West 48.51 feet; thence North 22 degrees 12 minutes 38 seconds East 400 feet to an RRS in the center of West College

Street; thence North 22 degrees 12 minutes 38 seconds East 300 feet to a stake; thence South 67 degrees 47 minutes 22 seconds East 34.05 feet; thence South 70 degrees 09 minutes 22 seconds East 85.03 feet; thence South 73 degrees 44 minutes 22 seconds East 81 feet; thence South 77 degrees 42 minutes 22 seconds East 78.06 feet; thence South 82 degrees 27 minutes 22 seconds East 79.78 feet; thence South 85 degrees 44 minutes 22 seconds East 82.60 feet; thence South 89 degrees 22 minutes 22 seconds East 80.37 feet; thence North 86 degrees 27 minutes 38 seconds East 82.86 feet; thence North 83 degrees 48 minutes 38 seconds East 91.33 feet; thence North 83 degrees 00 minutes 38 seconds East 494.83 feet; thence North 10 degrees 31 minutes 33 seconds East 2,529.20 feet; thence South 79 degrees 51 minutes 27 seconds East 90.98 feet to an RRS in the center of the Old Fayetteville Road (SR 1492); thence South 79 degrees 51 minutes 27 seconds East 109.02 feet to an RRS in the center of West Pine Street; thence North 11 degrees 01 minute 12 seconds East 369.53 feet to an IPS; thence South 79 degrees 47 minutes 31 seconds East 393.94 feet to an EIR; thence North 10 degrees 12 minutes 29 seconds East 496.85 feet to an IPS; thence South 88 degrees 32 minutes 14 seconds East 631.02 feet to an EIR; thence North 28 degrees 02 minutes 27 seconds East 65.09 feet to an IPS; thence South 79 degrees 28 minutes 27 seconds East 208.19 feet to an RRS in the centerline of North Fayetteville Street; thence South 79 degrees 28 minutes 27 seconds East 362.74 feet; thence North 10 degrees 31 minutes 33 seconds East 612.42 feet; thence North 07 degrees 59 minutes 09 seconds East 192.61 feet; thence North 06 degrees 50 minutes 42 seconds East 165.61 feet; thence North 72 degrees 55 minutes 38 seconds East 249.85 feet to a stake in the centerline of a 42 inch RCP culvert in the center of N C Highway 242; thence South 88 degrees 38 minutes 03 seconds East 230.60 feet; thence South 05 degrees 30 minutes 59 seconds West 88.57 feet; thence South 06 degrees 50 minutes 42 seconds West 204.96 feet; thence South 07 degrees 59 minutes 09 seconds West 207.39 feet; thence South 10 degrees 31 minutes 33 seconds West 622.62 feet; thence South 79 degrees 28 minutes 27 seconds East 1,694.52 feet to an RRS in the center of Northeast Main Street; thence South 79 degrees 28 minutes 27 seconds East 208.60 feet; thence South 10 degrees 31 minutes 33 seconds West 2,335.65 feet; thence North 83 degrees 34 minutes 21 seconds East 83.51 feet; thence North 85 degrees 08 minutes 21 seconds East 140.60 feet; thence South 04 degrees 51 minutes 39 seconds East 230 feet to an RRS in the center of Bonnettsville Road (SR 1233); thence South 07 degrees 46 minutes 39 seconds East 408.02 feet; thence South 82 degrees 41 minutes 21 seconds West 425.03 feet; thence South 10 degrees 31 minutes 33 seconds West 1,133.62 feet; thence North 83 degrees 10 minutes 33 seconds East 197.14 feet; thence North 88 degrees 22 minutes 33 seconds East 122.95 feet; thence South 86 degrees 13 minutes 27 seconds East 116.38 feet; thence South 84 degrees 03 minutes 27 seconds East 898.39 feet; thence South 81 degrees 05 minutes 27 seconds East 121.48 feet; thence South 74 degrees 08 minutes 27 seconds East 128.85 feet; thence South 67 degrees 46 minutes 27 seconds East 121.26 feet; thence South 63 degrees 51 minutes 56 seconds East 700.09 feet; thence South 26 degrees 08 minutes 04 seconds West 230 feet to a stake in the center of Laurel Lake Road as it passes over a 2-72 " CMP Culverts; thence South 16 degrees 02 minutes 04 seconds West 183.73 feet; thence South 43 degrees 07 minutes 25 seconds West 218.21 feet; thence South 10 degrees 51 minutes 25 seconds West 164.11 feet; thence South 31 degrees 11 minutes 25 seconds West 199.65 feet; thence North 57 degrees 35 minutes 35 seconds West 478.00 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 174.99 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 25.13 feet to an EIP; thence North 32 degrees 24 minutes 25 seconds East 66 feet; thence

North 63 degrees 51 minutes 56 seconds West 225.61 feet; thence North 67 degrees 46 minutes 27 seconds West 62.03 feet; thence North 74 degrees 08 minutes 27 seconds West 52.06 feet; thence North 81 degrees 05 minutes 27 seconds West 64.31 feet; thence North 84 degrees 03 minutes 27 seconds West 876.61 feet; thence North 05 degrees 56 minutes 33 seconds East 199.85 feet; thence North 86 degrees 13 minutes 27 seconds West 81.98 feet; thence South 88 degrees 22 minutes 33 seconds West 80.37 feet; thence South 83 degrees 10 minutes 33 seconds West 319.97 feet; thence South 10 degrees 31 minutes 33 seconds West 845.89 feet to an IPS; thence North 79 degrees 43 minutes 02 seconds West 36.99 feet to an EIR; thence South 26 degrees 28 minutes 47 seconds West 53.15 feet to an EIR; thence South 26 degrees 38 minutes 01 seconds West 38.62 feet to an EIR; thence South 46 degrees 53 minutes 32 seconds West 73.80 feet to an EIR; thence South 61 degrees 32 minutes 42 seconds West 80.73 feet to an EIR; thence North 59 degrees 39 minutes 13 seconds West 28.58 feet to an EIR; thence North 53 degrees 50 minutes 45 seconds West 67.19 feet to an EIR; thence South 31 degrees 59 minutes 33 seconds West 392.66 feet to an IPS; thence North 79 degrees 28 minutes 27 seconds West 1,357.52 feet; thence South 03 degrees 02 minutes 27 seconds West 215.16 feet; thence South 00 degrees 27 minutes 33 seconds East 1,327.49 feet; thence North 89 degrees 32 minutes 27 seconds East 170 feet; thence South 00 degrees 27 minutes 33 seconds East 295 feet; thence South 89 degrees 32 minutes 27 seconds West 170 feet; thence South 00 degrees 27 minutes 33 seconds East 738.43 feet; thence South 89 degrees 32 minutes 27 seconds West 230 feet to an RRS in the centerline of South Main Street (NC Hwy 242); thence South 89 degrees 32 minutes 27 seconds West 230 feet; thence North 00 degrees 27 minutes 33 seconds West 2,375 feet; thence North 03 degrees 02 minutes 27 seconds East 289.62 feet to the Point of Beginning. This being the REVISIONS TO TOWN LIMITS OF THE TOWN OF SALEMBURG, all as shown on a map entitled, "COMPOSITE MAP FOR TOWN OF SALEMBURG, SAMPSON COUNTY, NORTH CAROLINA, REVISIONS TO TOWN LIMITS", dated January 12, 2005, prepared by George Finch/Boney and Associates, P. A., 309 North Boylan Avenue, Raleigh, North Carolina 27603, reference to which is made for the purpose of incorporating the same herein."

SECTION 2. The territory described in Section 1 of this act is within the boundaries of the Honeycutts Fire District.

SECTION 3. Any and all official votes, acts, and actions of any member of the Board of Commissioners of the Town of Salemburg, prior to the enactment of this act, who has resided or who resides in any of the territory described in Section 1 of this act are hereby ratified, validated, and confirmed.

SECTION 4. All prior elections heretofore in which the qualified voters of the Town of Salemburg participated are validated, and the current Board of Commissioners are properly and legally acting as the Board of Commissioners of the Town.

SECTION 5. Any and all official acts, actions, expenditures, and levies of taxes or assessments by the Town of Salemburg prior to the enactment of this act, with respect to or affecting territories and properties described in Section 1 of this act are ratified, validated, and confirmed.

SECTION 6. Immediately upon this act becoming law, the Town Clerk shall cause an accurate map of the corporate limits to be filed in the offices of the Secretary of State, the Sampson County Register of Deeds, and the Sampson County Board of Elections. The Town Clerk shall cause to be placed on the face of the map the following certification, dated and signed by the Clerk, with the blanks filled in as

appropriate: "The corporate limits of the Town of Salemburg shown in this map are as established by Act of the North Carolina General Assembly ratified on the ____ day of **_____, 2005, as Session Law 2005-___." Immediately upon any subsequent alterations of the corporate limits, the appropriate filing of maps and ordinances shall be made, as required by general law.**

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of June, 2005.

Became law on the date it was ratified.

S.B. 249 **Session Law 2005-85**

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the City of Asheville:

(a) LOT 3 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina and being more particularly described as follows:

BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the southwesterly corner to Lot 4 Southridge Associates LLC Property; thence, with the northwesterly side of Airport Road (N.C. 280) three courses: (1) South 25 degrees 50 minutes 38 seconds West – 39.02 feet to a point; (2) South 25 degrees 30 minutes 39 seconds West – 50.15 feet to a right-of-way monument; and (3) South 25 degrees 27 minutes 18 seconds West – 220.74 feet to an iron rod, a northeasterly corner to C.E. Shope; thence, with C.E. Shope and continuing with Smith Land & Improvement Corporation North 76 degrees 31 minutes 32 seconds West – 535.53 feet to an iron pipe; thence, with Smith Land & Improvement Corporation South 05 degrees 17 minutes 48 seconds West – 518.24 feet to a iron pipe, a northeasterly corner to Dennis Weaver; thence with Dennis Weaver North 72 degrees 50 minutes 27 seconds West – 182.87 feet to an iron rod, a northeasterly corner to Rockwood Road, LLC; thence with Rockwood Road, LLC and continuing with Lot 6 Southridge Associates LLC Property North 65 degrees 04 minutes 25 seconds West – 431.63 feet to an iron rod, a southeasterly corner to Lot 5 Southridge Associates LLC Property; thence with Lot 5 Southridge Associates LLC Property three courses: (1)North 00 degrees 20 minutes 42 seconds West – 285.78 feet to an iron rod; (2)South 89 degrees 39 minutes 18 seconds West – 201.14 feet to an iron rod; and (3) Around a curve to the left (Chord South 44 degrees 39 minutes 18 seconds West – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod on the line of Lot 2 Southridge Associates LLC; thence with Lot 2 Southridge Associates LLC Property ten courses: (1) North 00 degrees 20 minutes 42 seconds West – 73.00 feet to a railroad spike; (2) North 89 degrees 39 minutes 18 seconds East – 467.34 feet to a railroad spike; (3) North 00 degrees 20 minutes 42 seconds West – 67.51 feet to a railroad spike; (4) Around a curve to the left (Chord North 81 degrees 53 minutes 04 seconds East – 79.15 feet, Radius 314.50 feet, Delta 14 degrees 27 minutes 29 seconds, Length 79.36 feet) to an iron rod; (5) North 74 degrees 39 minutes 18 seconds East – 16.64 feet to an iron rod; (6) North 00 degrees 20 minutes 42 seconds West – 470.27 feet to an iron rod;

(7) South 89 degrees 39 minutes 18 seconds West – 57.86 feet to an iron rod; (8) North 00 degrees 20 minutes 42 seconds West – 183.56 feet to an iron rod; (9) North 89 degrees 39 minutes 18 seconds East – 10.19 feet to an iron rod; and (10) North 00 degrees 20 minutes 42 seconds West – 342.00 feet to an iron rod on the line of Ovalformer, LLC; thence with Ovalformer, LLC and continuing with Jules Johnson and Anthony Kushigian South 86 degrees 36 minutes 54 seconds East – 1,014.99 to an iron rod, a northwesterly corner to Lot 4 Southridge Associates LLC; thence with Lot 4 Southridge Associates LLC South 00 degrees 20 minutes 42 seconds East – 888.69 feet to the BEGINNING. Containing 31.105 acres, more or less.

(b) LOT 4 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina and being more particularly described as follows: BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the southeasterly corner to Lot 3 Southridge Associates LLC Property; thence with Lot 3 Southridge Associates LLC Property North 00 degrees 20 minutes 42 seconds West – 888.69 feet to an iron rod on the line of Anthony Kushigian; thence with Anthony Kushigian three courses: (1) South 86 degrees 36 minutes 54 seconds East – 140.97 feet to an iron pipe; (2) South 31 degrees 07 minutes 34 seconds East – 258.10 feet to an iron pipe; and (3) South 83 degrees 53 minutes 06 seconds East – 251.34 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) two courses: (1) South 55 degrees 40 minutes 08 seconds West – 1.48 feet to an iron rod; and (2) Around a curve to the left (Chord South 50 degrees 17 minutes 18 seconds West – 246.10 feet, Radius 1,482.39 feet, Delta 09 degrees 31 minutes 22 seconds, Length 246.38 feet) to an iron rod, a southeasterly corner to Lot 4A Southridge Associates LLC Property; thence with Lot 4A Southridge Associates LLC Property five courses: (1) North 44 degrees 01 minutes 00 seconds West – 88.83 feet to an iron rod; (2) Around a curve to the right (Chord North 37 degrees 34 minutes 17 seconds West – 50.74 feet, Radius 226.00 feet, Delta 12 degrees 53 minutes 26 seconds, Length 50.85 feet) to an iron rod; (3) North 31 degrees 07 minutes 34 seconds West – 49.95 feet to an iron rod; (4) South 54 degrees 29 minutes 19 seconds West – 147.41 feet to an iron rod; and (5) South 09 degrees 04 minutes 44 seconds East – 295.83 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) six courses: (1) Around a curve to the left (Chord South 32 degrees 40 minutes 49 seconds West – 63.40 feet, Radius 1,482.39 feet, Delta 02 degrees 27 minutes 03 seconds, Length 63.41 feet) to a right-of-way monument; (2) South 30 degrees 30 minutes 38 seconds West – 51.60 feet to a point; (3) South 28 degrees 50 minutes 40 seconds West – 51.31 feet to a point; (4) South 27 degrees 30 minutes 40 seconds West – 51.02 feet to a point; (5) South 26 degrees 30 minutes 40 seconds West – 50.73 feet to a point; and (6) South 25 degrees 50 minutes 38 seconds West – 11.42 feet to the BEGINNING. Containing 3.379 acres, more or less.

(c) LOT 4A OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at a point on the northwesterly side of Airport Road (N.C. 280), said point being the northeasterly corner to Lot 4 Southridge Associates LLC Property; thence with the northwesterly side of Airport Road (N.C. 280) two courses: (1) South 55 degrees 40 minutes 08 seconds West – 1.48 feet to an iron rod; and (2) Around a curve to the left (Chord South 50 degrees 17

minutes 18 seconds West – 246.10 feet, Radius 1,482.39 feet, Delta 09 degrees 31 minutes 22 seconds, Length 246.38 feet) to an iron rod, the TRUE POINT OF BEGINNING. Thence with Lot 4 Southridge Associates LLC Property five courses: (1) North 44 degrees 01 minutes 00 seconds West – 88.83 feet to an iron rod; (2) Around a curve to the right (Chord North 37 degrees 34 minutes 17 seconds West – 50.74 feet, Radius 226.00 feet, Delta 12 degrees 53 minutes 26 seconds, Length 50.85 feet) to an iron rod; (3) North 31 degrees 07 minutes 34 seconds West – 49.95 feet to an iron rod; (4) South 54 degrees 29 minutes 19 seconds West – 147.41 feet to an iron rod; and (5) South 09 degrees 04 minutes 44 seconds East – 295.83 feet to an iron rod on the northwesterly side of Airport Road (N.C. 280); thence with the northwesterly side of Airport Road (N.C. 280) around a curve to the right (Chord North 39 degrees 42 minutes 59 seconds East – 300.16 feet, Radius 1,482.39 feet, Delta 11 degrees 37 minutes 16 seconds, Length 300.67 feet) to the BEGINNING. Containing 1.029 acres, more or less.

(d) LOT 5 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at an iron rod on the easterly line of Lot 2 Southridge Associates, LLC Property, said iron rod being a northwesterly corner to Lot 6 Southridge Associates, LLC Property; thence with Lot 2 North 00 degrees 20 minutes 42 seconds West – 230.78 feet to an iron rod, a westerly corner to Lot 3 Southridge Associates, LLC Property; thence with Lot 3 Southridge Associates, LLC Property three courses: (1) Around a curve to the right (Chord North 44 degrees 39 minutes 18 seconds East – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod; (2) North 89 degrees 39 minutes 18 seconds East – 201.14 feet to an iron rod; and (3) South 00 degrees 20 minutes 42 seconds East – 285.78 feet to an iron rod, a northerly corner to Lot 6 Southridge Associates, LLC Property; thence with Lot 6 South 89 degrees 39 minutes 18 seconds West – 256.14 feet to the BEGINNING. Containing 1.666 acres, more or less.

(e) LOT 6 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at an iron rod on the northerly side of Rockwood Road (S.R. 3568), said iron rod being a southeasterly corner to Lot 2 Southridge Associates, LLC Property; thence with Lot 2 three courses: (1) Around a curve to the right (North 15 degrees 14 minutes 09 seconds East – 42.25 feet, Radius 50.00 feet, Delta 49 degrees 59 minutes 25 seconds, Length 43.63 feet) to a mag nail; (2) Around a curve to the left (Chord North 19 degrees 56 minutes 31 seconds East – 81.83 feet, Radius 118.00 feet, Delta 40 degrees 34 minutes 26 seconds, Length 83.56 feet) to a mag nail; and (3) North 00 degrees 20 minutes 42 seconds West – 88.47 feet to an iron rod, a southwesterly corner to Lot 5 Southridge Associates, LLC Property; thence with Lot 5 Southridge Associates, LLC Property North 89 degrees 39 minutes 18 seconds East – 256.14 feet to an iron rod, a southwesterly corner to Lot 3 Southridge Associates, LLC Property; thence with Lot 3 South 65 degrees 04 minutes 25 seconds East – 12.64 feet to a iron pipe, a northwesterly corner to Rockwood Road, LLC; thence with Rockwood Road, LLC South 12 degrees 15 minutes 00 seconds West – 374.37 feet to an iron rod on the northerly side of Rockwood Road; thence with the northerly side of Rockwood Road two courses: (1) North 57 degrees 41 minutes 58

seconds West – 161.39 feet to an iron rod; and (2) North 49 degrees 26 minutes 20 seconds West – 118.77 feet to the BEGINNING. Containing 1.740 acres, more or less.

(f) LOT 7 OF THE REPLAT OF SOUTHRIDGE ASSOCIATES, LLC PROPERTY: Located in Limestone Township, Buncombe County, North Carolina, and being more particularly described as follows: BEGINNING at a mag nail in Rockwood Road (S.R. 3568), said mag nail being a southwesterly corner to Lot 1 Southridge Associates, LLC Property; thence down Rockwood Road (S.R. 3568) five courses: (1) North 49 degrees 26 minutes 20 seconds West – 70.89 feet to a pk nail; (2) North 04 degrees 11 minutes 40 seconds East – 14.55 feet to a pk nail; (3) North 35 degrees 44 minutes 47 seconds West – 141.78 feet to a pk nail; (4) North 40 degrees 10 minutes 37 seconds West – 68.52 feet to a pk nail; and (5) North 43 degrees 32 minutes 08 seconds West – 364.75 feet to a pk nail; thence North 03 degrees 51 minutes 25 seconds East – 28.26 feet to an iron rod; thence North 46 degrees 16 minutes 25 seconds East – 10.61 feet to an iron rod on the northerly side of Rockwood Road (S.R. 3568); thence with the northerly side of Rockwood Road (S.R. 3568) five courses: (1) North 43 degrees 43 minutes 35 seconds West – 203.79 feet to an iron rod; (2) Around a curve to the right (Chord North 31 degrees 30 minutes 04 seconds West – 100.54 feet, Radius 288.31 feet, Delta 20 degrees 04 minutes 59 seconds, Length 101.06 feet) to an iron rod; (3) North 28 degrees 06 minutes 00 seconds West – 53.85 feet to an iron rod; (4) North 22 degrees 44 minutes 00 seconds West – 356.99 feet to an iron rod; and (5) North 21 degrees 21 minutes 00 seconds West – 44.52 feet to a right-of-way monument; thence with Able Outdoor, Inc. North 10 degrees 09 minutes 30 seconds East – 409.62 feet to an iron rod; thence with Rita Bullman, ETAL South 89 degrees 09 minutes 39 seconds East – 216.19 feet to an iron rod, a northwest corner to Lot 1 Southridge Associates, LLC Property; thence with Lot 1 Southridge Associates, LLC Property twelve courses: (1) South 00 degrees 20 minutes 42 seconds East – 339.36 feet to an iron rod; (2) North 89 degrees 39 minutes 18 seconds East – 47.00 feet to an iron rod; (3) South 00 degrees 20 minutes 42 seconds East – 420.00 feet to an iron rod; (4) South 30 degrees 20 minutes 42 seconds East – 257.34 feet to an iron rod; (5) North 59 degrees 19 minutes 51 seconds East – 18.01 feet to an iron rod; (6) Around a curve to the left (Chord South 60 degrees 30 minutes 27 seconds East – 348.28 feet, Radius 350.00 feet, Delta 59 degrees 40 minutes 30 seconds, Length 364.53 feet) to an iron rod; (7) North 89 degrees 39 minutes 18 seconds East – 16.38 feet to an iron rod; (8) Around a curve to the right (Chord South 45 degrees 20 minutes 42 seconds East – 77.78 feet, Radius 55.00 feet, Delta 90 degrees 00 minutes 00 seconds, Length 86.39 feet) to an iron rod; (9) South 00 degrees 20 minutes 42 seconds East – 319.26 feet to an iron rod; (10) Around a curve to the right (Chord South 23 degrees 47 minutes 48 seconds West – 67.08 feet, Radius 82.00 feet, Delta 48 degrees 17 minutes 01 seconds, Length 69.10 feet) to an iron rod; (11) Around a curve to the right (Chord North 84 degrees 14 minutes 55 seconds West – 37.05 feet, Radius 25.00 feet, Delta 95 degrees 37 minutes 31 seconds, Length 41.72 feet) to an iron rod; and (12) South 40 degrees 33 minutes 40 seconds West – 4.65 feet to the BEGINNING. Containing 8.817 acres, more or less.

SECTION 2. Paragraph (e) of Section 1 of this act becomes effective October 31, 2005. Paragraphs (a), (b), (c), (d) and (f) of Section 1 of this act become effective October 31, 2006.

In the General Assembly read three times and ratified this the 15th day of June, 2005.

Became law on the date it was ratified.

S.B. 442 **Session Law 2005-86**

AN ACT AUTHORIZING THE TOWN OF BLOWING ROCK TO ESTABLISH AN OFF-STREET PARKING FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, the governing body of a municipality may establish a fund into which payments from individual firms, persons, corporations, or property owners shall be deposited for the purpose of providing off-street parking facilities, and from which appropriations shall be made exclusively for the purpose of organizing, establishing, developing, or enlarging off-street parking facilities within the municipality. The governing board may provide in the municipality's land-use ordinance that all developers must either provide adequate off-street parking (on-site or off-site) to serve their developments or pay a fee to the municipality's off-street parking facilities fund based on the number of required parking spaces not provided.

SECTION 2. This act applies to the Town of Blowing Rock only.

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

In the General Assembly read three times and ratified this the 15th day of June, 2005.

Became law on the date it was ratified.

S.B. 466 **Session Law 2005-87**

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF GIBSONVILLE AND ANNEX IT TO THE CITY OF BURLINGTON, AND TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF BURLINGTON AND TO ANNEX IT TO THE TOWN OF GIBSONVILLE, ALL AS REQUESTED BY THE TWO MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Gibsonville and is added to the corporate limits of the City of Burlington:

Tract I

Beginning in Guilford County at an existing iron pipe, said existing iron pipe being located at the Southeast Intersection of Greeson Road & N.C. Hwy. #61; thence running along the Eastern Right-of-Way line of N.C. Hwy. #61 South 17 Degrees, 00 Minutes, & 01 Second West 382.28 Ft. to a point along same said Right-of-Way, also said point being on the Northern Right-of-Way line of Pace Drive; thence continuing along the Northern Right-of-Way of Pace Drive South 69 Degrees, 00 Minutes, & 44 Seconds East 1.74 Ft. to a point the P.C. of a curve to the right, the radius being 305 Ft., the chord being South 48 Degrees, 17 Minutes, & 20 Seconds East 215.85 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 27 Degrees, 33 Minutes, & 56 Seconds East 73.68 Ft. to a point the P.C. of a curve to the Left, the

radius being 225 Ft., the chord being South 40 Degrees, 59 Minutes, & 09 Seconds East 104.44 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 54 Degrees, 24 Minutes, & 23 Seconds East 266.14 Ft. to a point the P.C. of a curve to the Left, the radius being 295 Ft., the chord being South 68 Degrees, 14 Minutes, & 35 Seconds East 141.10 Ft. to a point the P.T. of a curve; thence continuing along same said Right-of-Way South 82 Degrees, 04 Minutes, & 47 Seconds East 256.27 Ft. to a point the P.C. of a curve to the Left, the radius being 4,555.68 Ft., the chord being South 83 Degrees, 19 Minutes, & 47 Seconds East 198.76 Ft. to a point the P.T. of the curve; thence continuing along same said Right-of-Way South 84 Degrees, 34 Minutes, & 47 Seconds East 475.94 Ft. to a point; thence continuing North 04 Degrees, 38 Minutes, & 11 Seconds East 931.19 Ft. to an existing iron on the Southern Right-of-Way of Greeson Road; thence continuing along same said Right-of-Way South 89 Degrees, 42 Minutes, & 32 Seconds West 312.50 Ft. to an existing iron on same said Right-of-Way; thence continuing along same said Right-of-Way North 89 Degrees, 14 Minutes, & 31 Seconds West 616.11 Ft. to an existing iron pipe on same said Right-of-Way; thence continuing along same said Right-of-Way North 88 Degrees, 07 Minutes, & 24 Seconds West 175.78 Ft. to an existing iron pipe on same said Right-of-Way; thence continuing along same said Right-of-Way North 86 Degrees, 31 Minutes, & 49 Seconds West 397.88 Ft. to an existing iron pipe the point of beginning containing 28.051 acres more or less; the same being Lot 1 of the property of Pace Oil Company as recorded in Plat Book 89, Page 36; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3683, Page 765, Guilford County Registry.

Tract II

Beginning in Guilford County at a new iron pipe on the Eastern Right-of-Way line of N.C. 61, said new iron pipe being a common corner with G. H. Kirkpatrick, Jr.; thence running along the Northern line of Kirkpatrick South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler, thence along the Northern line of Thelma T. Wheeler North 88 Degrees, 49 Minutes & 45 Seconds East 145.14 Ft. to a point along the Southern Right-of-Way of Pace Drive; thence continuing along the Southern Right-of-Way of Pace Drive North 54 Degrees, 24 Minutes & 23 Seconds West 68-31 Ft. to a point the P.C. of a curve to the Right, the radius being 275 Ft., the chord being North 40 Degrees, 59 Minutes & 10 Seconds West 127.65 Ft. to a point, the P.T. of the curve; thence continuing along the Southern Right-of-Way of Pace Drive North 27 Degrees, 33 Minutes & 56 Seconds West 73.68 Ft. to a point the P.C. of a curve to the Left the radius being 255 Ft., the chord being North 48 Degrees, 05 Minutes & 35 Seconds West 178.84 Ft. to a point the P.T. of the curve, said point being also on the Eastern Right-of-Way of N.C. Hwy. 61, thence continuing along said Right-of-Way South 17 Degrees, 00 Minutes & 01 Second West 36.73 Ft. to a new iron pipe, the point of beginning, containing 0.6754 acres more or less; also being Lot 2 of the Property of Pace Oil Company as recorded in Plat Book 89, Page 36; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3683, Page 765, Guilford County Registry.

Tract III

Beginning in Guilford County at an existing R/W monument, situated East of the intersection of the up-ramp from the Westbound lane of Interstate 85, and N.C. Highway 61, thence North 07 Degrees, 44 Minutes, & 52 Seconds West along said Right-of-Way of up-ramp 93.24 Ft. to a new iron pipe on the East Right-of-Way line of N.C. #61, thence North 27 Degrees, 13 Minutes & 12 Seconds East 87.78 Ft. to a new iron pipe along same said Right-of-Way; thence continuing along same said Right-of-Way North 21 Degrees, 12 Minutes & 24 Seconds East 83.53 Ft. to a new iron pipe a corner with Pace Oil Co.; thence running South 30 Degrees, 47 Minutes & 49 Seconds East 336.12 Ft. to a new iron pipe in the Northern line of Thelma T. Wheeler property; thence running along Thelma T. Wheeler's North line North 77 Degrees, 47 Minutes & 03 Seconds West 3.36 Ft. to a concrete Right-of-Way monument; thence continuing along Thelma T. Wheeler's North line South 87 Degrees, 16 Minutes & 03 Seconds West 191.97 Ft. to an existing iron pipe on the East side of the up-ramp leading from Interstate 85; thence continuing along said up-ramp North 41 Degrees, 11 Minutes, & 57 Seconds West 20.84 Ft. to an existing Right-of-Way Monument; thence continuing along up-ramp North 32 Degrees, 30 Minutes & 03 Seconds West 39.32 Ft. to an existing Right-of-Way monument, the Point of Beginning, containing 0.883 acres more or less; SAVE AND EXCEPT THEREFROM that parcel of land deeded to the Department of Transportation recorded in Book 3651, Page 704, Guilford County Registry; the same being that property deeded to Pace Oil Company, Inc. recorded in Book 3673, Page 20, Guilford County Registry.

Tract IV

BEGINNING in Guilford County at a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc. and running thence from said point of beginning with Pace Oil Company, Inc., North 17º 48' 29" East 1021.71 feet to an existing iron stake in the southern margin of the 60 foot right of way of Greeson Road (SR 3065), a corner with Pace Oil Company, Inc.; thence along the southern margin of the 60 foot right of way of Greeson Road, South 84º 36' 26" East 383.39 feet to an existing iron stake in the southern margin of Greeson Road; thence continuing along the southern margin of Greeson Road, South 83º 40' 30" East 175.56 feet to an existing iron stake in the southern margin of Greeson Road, a corner with Radcliffe, Rudd and Lanier, Jr., thence with Radcliffe, Rudd and Lanier, Jr., South 1º 53' 16" W. 241.74 feet to an existing stone corner with Radcliffe et al and Pace Oil Company, Inc.; thence with Pace Oil Company, Inc., South 29º 52' 50" West 828.41 feet to a new iron stake in the northern margin of the right of way of Interstate 85, a corner with Pace Oil Company, Inc.; thence along the northern margin of the right of way of Interstate 85, North 84º 34' 47" West 450 feet to the point and place of BEGINNING, containing 12.642 acres, more or less.

The foregoing description was taken from surveys of William L. Knight, Jr., dated December 28, 1988 and January 12, 1989.

Also included is a tract 60 feet in width and running along the southern boundary of Tract A, containing 11.770 acres, more or less, now or formerly owned by Pace Oil Company, Inc.; said property being adjacent to the northern margin of the right of way of Interstate 85. Said property is more particularly described on that certain survey of

Pace Oil Company, Inc., dated January 12, 1989, a copy of which is attached to that certain deed from Pace Oil Company, Inc. to Scholl America, Inc., dated January 13, 1989, which deed is recorded in Deed Book 3713, at Page 1759 of the Guilford County Registry.

Tract V

BEGINNING in Guilford County at a crossmark in I-85 a corner with Springwood Church; running thence North 4º 39' East 1052 feet to a crossmark in the center of Springwood Church Road a corner with Robert E. Sheahan (after leaving I-85 the line runs to the center of Springwood Church Road) thence with the line of Robert E Sheahan North 88º 11' East 609.07 feet to an iron stake a corner with Sheahan (iron stake set in this line 30 feet from center of road); thence again with Sheahan North 4º 08' East 297.95 feet to an iron stake in the line of Carson T. Ingle (control corner set in this line 30.15 feet from the beginning point of the call) running thence with line of Ingle South 85º 51' East 1488.50 feet to an iron stake in the line of O.W. Williams (old stake in this line 279.77 feet from the corner); running thence with the line of O.W. Williams South 2º 50' West 977.02 feet to a crossmark in I-85 (iron stake set in this line at the right-of-way of I-85 which is 132.13 feet from a crossmark in I-85); thence in the right-of-way of I-85 South 82º 30' West 2169.74 feet to the Beginning point containing 53.28 acres, more or less, of which 6.47 acres is within the right-of-way of I-85. This conveyance is made subject to the right-of-way of I-85, the right-of-way of Springwood Church Road and the right-of-way of the power line as shown on the plat drawn by J. Mark McAdams on June 24, 1967.

SECTION 2. The following described property is removed from the corporate limits of the City of Burlington and is added to the corporate limits of the Town of Gibsonville:

A certain tract or parcel of land in Rock Creek Township, Guilford County, North Carolina, adjoining the lands of Billy D. Moser and Ethel H. Moser, Shirley M. Perry, H. Clay Hemric, Jr. and Nancy G. Hemric, US 70 – South Church Street, Randy Lynn Ingle and others and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of US 70 – South Church Street, said point lying N. 87° 22' 02" E. 324.45 feet from a common corner with Michael F. Turner and Victoria C. Tanner and Randy Lynn Ingle in the south right-of-way line of US 70 – South Church Street and running thence from said Beginning Point across US 70 and continuing with the line of Billy D. and Ethel H. Moser, N. 2° 45' 03" W. 433.21 feet to a point in the line of Shirley M. Perry; thence with the line of Shirley M. Perry the following courses and distances: S. 70° 13' 01" E. 106.33 feet to a point; thence S. 25° 54' 33" E. 30.55 feet to a point; thence S. 53° 27' 06" E. 49.46 feet to a point; thence S. 83° 17' 44" E. 80.51 feet to a point; thence S. 45° 39' 32" E. 85.22 feet to a point; thence S. 67° 54' 40" E. 68.64 feet to a point; thence N. 76° 18' 58" E. 30.37 feet to a point; thence N. 21° 23' 30" E. 158.99 feet to a point; thence N. 51° 01' 39" E. 154.14 feet to a corner with H. Clay Hemric, Jr. and Nancy G. Hemric; thence with the said Hemric the following courses and distances: S. 69° 26' 48" E. 113.50 feet to a point; thence S. 76° 11' 42" E. 108.93 feet to a point; thence S. 59° 10' 39" E. 186.25 feet to a point; thence S. 33° 03' 34" E. 188.62 feet to a point; thence S. 66° 28' 14" E. 59.85 feet to a point; thence S. 86° 44' 36" E. 82.83 feet to a point; thence with said Hemric and continuing across US 70 – South Church Street, S. 03° 05' 49" W. 96.43 feet to a point in the south right-of-way line of US 70 – South

Church Street and in the line of Randy Lynn Ingle; thence with the south right-of-way line of US 70 – South Church Street and the line of said Ingle, S. 87° 22' 02" W. 1152.65 feet to the point of BEGINNING and containing 8.583 acres (0.0134 sq. mile) and being all of Lot No. 4 and the right-of-way of US 70 – South Church Street that adjoins Lot No. 4 as shown on a plat by Simmons Engineering and Surveying, Inc. entitled Property of City of Burlington and Randy Lynn Ingle, dated December 4, 2000, and recorded at Plat Book 140, page 101 in the Guilford County Register of Deeds.

SECTION 3. This act shall have no effect upon the validity of any liens of the Town of Gibsonville or the City of Burlington for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Gibsonville or the City of Burlington.

SECTION 4. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law on the date it was ratified.

H.B. 470 **Session Law 2005-88**

AN ACT TO ALLOW TRANSYLVANIA COUNTY TO INCREASE THE OCCUPANCY TAX RATE IN THAT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Levy of Additional Occupancy Tax. – In addition to the tax authorized by Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, the Transylvania County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that Chapter. The levy, collection, administration, and repeal of the tax authorized by this act shall be in accordance with the provisions of Section 1 of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205. Transylvania County may not levy a tax under this act unless it also levies the tax authorized under Chapter 969 of the 1985 Session Laws.

SECTION 2. Use of Proceeds of Additional Tax. – Transylvania County shall use funds collected under this act only in accordance with Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205 and this act.

SECTION 3. Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, reads as rewritten:

"(e) Use of Tax Revenue. Transylvania County ~~shall place revenue collected from a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism and for tourism-related expenditures in Transylvania County.~~ shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205 and this act, and under Section 1 of this act to the Transylvania Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Transylvania County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

~~(1)~~(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.

~~(2)~~(3) Tourism-related expenditures. – Expenditures that, in the judgment of the governing authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures."

SECTION 4. Tourism Development Authority. – (a) Appointment and Membership. – The board of commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' terms of office and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the occupancy tax in the county and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 4.(b) Duties. – The Authority shall expend the net proceeds of the taxes levied under this act and under Chapter 969 of the 1985 Session Laws, as amended by S.L. 1999-205, for the purposes provided in Section 1(e) of Chapter 969 of the 1985 Session Laws, as amended. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 4.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 5. This act applies only to Transylvania County.

SECTION 6. This act is effective when it become law.

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law on the date it was ratified.

H.B. 1054 **Session Law 2005-89**

AN ACT TO PROVIDE THAT LOCAL GOVERNMENTS THAT ARE A PARTY TO THE SWIFT CREEK MANAGEMENT PLAN AND CERTAIN CITIZENS OF THOSE LOCAL GOVERNMENTS HAVE STANDING TO ENFORCE THE PROVISIONS OF S.L. 1998-192.

Whereas, in 1988, representatives of the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner developed the Swift Creek Management Plan, a coordinated land-use plan for the Swift Creek watershed; and

Whereas, the local governments having jurisdiction over the area approved the Swift Creek Management Plan through appropriate action of their respective governing bodies; and

Whereas, in 1998, the General Assembly found that it was in the best interest of the citizens of the Swift Creek area and those local governments to maintain the Swift Creek Management Plan as agreed to by those local governments; and

Whereas, in order to maintain the Swift Creek Management Plan, the General Assembly enacted S.L. 1998-192, which provides that the local governments that are parties to the Swift Creek Management Plan shall not adopt, amend, or repeal any ordinance authorized by Article 18 of Chapter 153A of the General Statutes, Article 19 of Chapter 160A of the General Statutes, or under any local act or charter provision relating to the subject of those Articles, nor grant any permit or approval pursuant to those ordinances, that would be inconsistent with the standards and provisions of the Swift Creek Management Plan; and

Whereas, the General Assembly finds that it is in the best interests of the citizens of the Swift Creek area and the local governments that have agreed to maintain the Swift Creek Management Plan that the standing of these local governments and certain citizens of the Swift Creek area to enforce the provisions of S.L. 1998-192 be clarified; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The provisions of Sections 1 through 3 of S.L. 1998-192 may be enforced as provided in this section.

SECTION 1.(b) Any local government that is a party to the Swift Creek Management Plan shall have standing to contest an action of another party to the Swift Creek Management Plan that the local government believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192.

SECTION 1.(c) Any person who resides in the jurisdiction of a local government that is a party to the Swift Creek Management Plan and who also resides in the Swift Creek watershed shall have standing to contest an action of any party to the Swift Creek Management Plan that the person believes is inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192, provided that the person has a specific personal or legal interest in the action and is adversely affected thereby.

SECTION 1.(d) A local government or person who has standing under subsection (b) or (c) of this section may file a petition in the superior court of Wake County seeking review of the action of a local government that the local government or

person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192. A petition under this section shall be filed no later than 60 days after the adoption, amendment, or repeal of the ordinance, the grant of the permit or approval, an extension of any utility, or other action the local government or person believes to be inconsistent with the standards and provisions of the Swift Creek Management Plan in violation of the provisions of Sections 1 through 3 of S.L. 1998-192.

SECTION 1.(e) A petition filed under this section shall state with specificity what exceptions are taken to the action of the respondent local government and what relief the petitioner seeks. Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent local government shall transmit to the court a copy of the ordinance, permit, or approval and any other minutes or documents that constitute the record of the challenged action.

SECTION 1.(f) The court may hear oral arguments, receive written briefs, and take evidence on the question of whether or not there has been a violation of Sections 1 through 3 of S.L. 1998-192.

SECTION 1.(g) If the court determines that there has been a violation of Sections 1 through 3 of S.L. 1998-192, it shall declare the ordinance, permit, approval, or other action void and may order any additional relief that appears appropriate.

SECTION 2. This act shall not be construed to preclude a judicial determination, based on common-law principles, statutory provisions, or other law, that standing exists in a particular case for a person to bring an action to challenge an alleged violation of the Swift Creek Management Plan and the provisions of Sections 1 through 3 of S.L. 1998-192.

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

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law on the date it was ratified.

S.B. 14 Session Law 2005-90

AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A CANAL DREDGING FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 as rewritten by S.L. 2005-47 reads as rewritten:

"**SECTION 7.** This act applies only within the municipal boundaries of the ~~Town~~ Towns of ~~Emerald Isle~~ Emerald Isle, Holden Beach, and Ocean Isle Beach."

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

In the General Assembly read three times and ratified this the 21st day of June, 2005.

Became law on the date it was ratified.

H.B. 710 **Session Law 2005-91**

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE LAW GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, AND THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-4(e) reads as rewritten:

"(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

On and after July 1, 1973, a member whose account in the North Carolina Local Governmental Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the North Carolina Local Governmental Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

On or after July 1, 1979, a member who has obtained 60 months of aggregate service, or five years of membership service, as an employee of the North Carolina General Assembly, except legislators, participants in the Legislative Intern Program and pages, may make a lump sum payment together with interest, and an administrative fee for such service, to the Teachers' and State Employees' Retirement System of an amount equal to what he would have contributed had he been a member on his first day of employment.

On and after January 1, 1985, the creditable service of a member who was a member of the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by the State from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, shall include service that was creditable in the Law-Enforcement Officers' Retirement System; and membership service with that System shall be membership service with this Retirement System; provided, notwithstanding any provision of this Article to the contrary, any inchoate or accrued rights of such a

member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law-Enforcement Officers' Retirement System shall not be diminished and may be purchased as creditable service with this Retirement System under the same conditions which would have otherwise applied."

SECTION 2. G.S. 135-5(g) reads as rewritten:

"(g) Election of Optional Allowance. – With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the ~~remarriage.~~ remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1.(a) In the Case of a Member Who Retires prior to July 1, 1963. – If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. – If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written

designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. – Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. – The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option."

SECTION 3. G.S. 135-5(g1) reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative."

SECTION 4. Article 1 of Chapter 135 is amended by adding a new section to read:

"**§ 135-10.1. Failure to respond.**

If a member fails to respond in any way within 90 days after preliminary option figures and Form 6-E, Election of Benefits, are mailed, the Form 6, Application for Service, Early or Disability Retirement, shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved."

SECTION 5. G.S. 135-64(c) reads as rewritten:

"(c) In the event of the death of a former member while in receipt of a retirement allowance under the provisions of ~~G.S. 135-58 or 135-60 (but not 135-61),~~ G.S. 135-58, 135-60, or 135-61, if such former member is not survived by a spouse to whom a retirement allowance is payable under the provisions of subsection (a) or subsection (b) above, nor survived by a beneficiary to whom a monthly survivorship benefit is payable under one of the optional modes of payment under G.S. 135-61, there shall be paid to such person as the member shall have nominated by written designation duly

acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the member at his date of retirement over the total of the retirement allowances paid to him prior to his death."

SECTION 6. G.S. 135-64(d) reads as rewritten:

"(d) In the event that a retirement allowance becomes payable to the spouse of a former member under the provisions of subsection (a) or subsection (b) above, ~~provided that the member's retirement allowance had not been paid~~ or to the designated survivor of a former member under one of the optional modes of payment under G.S. 135-61, and such retirement allowance to the spouse shall terminate on the remarriage or death of the ~~spouse~~ spouse, or on the death of the designated survivor, before the total of the retirement allowances paid to the former member and his spouse or designated survivor combined equals the amount of the member's accumulated contributions at his date of retirement, the excess of such accumulated contributions over the total of the retirement allowances paid to the former member and his spouse or designated survivor combined shall be paid in a lump sum to such person as the member shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives."

SECTION 6.1. G.S. 135-106(a) reads as rewritten:

"(a) **(Effective until August 1, 2005)** Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit

shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to ~~conclusion of the short-term disability period~~ becoming disabled or upon cessation of continuous salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 7. G.S. 135-111 reads as rewritten:

"§ **135-111. Applicability of other pension laws.**

Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled "Exemption from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection against fraud"; G.S. 135-10.1, entitled "Failure to Respond"; and G.S. 135-17, entitled "Facility of payment" shall be applicable to this Article and to benefits paid pursuant to the provisions of this Article."

SECTION 8. G.S. 128-26(e) reads as rewritten:

"(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and State Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from

membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied."

SECTION 9. G.S. 128-27(g) reads as rewritten:

"(g) Election of Optional Allowance. – With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the ~~remarriage.~~ remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options two, three, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance

computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option one.

(a) In the Case of a Member Who Retires prior to July 1, 1965. – If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.

(b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. – If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. – Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Table II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. – The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option."

SECTION 10. G.S. 128-27 reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative."

SECTION 11. G.S. 128-31 reads as rewritten:

"§ **128-31. Exemptions from execution.**

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the

right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement ~~system or~~ system, the Disability Salary Continuation ~~Plan~~ Plan, or the Disability Income Plan of North Carolina may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

SECTION 12. Article 3 of Chapter 128 of the General Statutes is amended by adding a new section to read:

"**§ 128-32.1. Failure to respond.**

If a member fails to respond in any way within 90 days after preliminary option figures and Form 6-E, Election of Benefits, are mailed, the Form 6, Application for Service, Early, or Disability Retirement, shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved."

SECTION 13. G.S. 58-86-85 is repealed.

SECTION 14. G.S. 58-86-35 reads as rewritten:

"**§ 58-86-35. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of ~~members.~~ members; termination of membership.**

Those firemen who are eligible pursuant to G.S. 58-86-25 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of ten dollars ($10.00) per month. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at anytime and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member."

SECTION 15. G.S. 58-86-40 reads as rewritten:

"**§ 58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of ~~members.~~ members; termination of membership.**

Those rescue squad workers eligible pursuant to G.S. 58-86-30 may apply to the board for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of ten dollars ($10.00) per month. The monthly payments shall be credited to the separate account of the member and shall be

kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at anytime and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member."

SECTION 16. Section 6.1 of this act becomes effective December 1, 2004. The remainder of this act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 15th day of June, 2005.

Became law upon approval of the Governor at 9:00 p.m. on the 21st day of June, 2005.

H.B. 676 **Session Law 2005-92**

AN ACT PROVIDING THAT THE OFFICE OF STATE BUDGET AND MANAGEMENT MUST APPROVE CERTAIN FEES RELATING TO GOVERNMENT E-COMMERCE IN CONSULTATION WITH THE STATE CHIEF INFORMATION OFFICER AND THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58.12(c) reads as rewritten:

"(c) The fee imposed under subsection (b) of this section must be approved by the ~~State Chief Information Officer,~~ Office of State Budget and Management, in consultation with the State Chief Information Officer and the Joint Legislative Commission on Governmental Operations. The revenue derived from the fee must be credited to a nonreverting agency reserve account. The funds in the account may be expended only for e-commerce initiatives and projects approved by the State Chief Information Officer, in consultation with the Joint Legislative Oversight Committee on Information Technology. For purposes of this subsection, the term "public agencies" does not include a county, unit, special district, or other political subdivision of government."

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

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:03 p.m. on the 21st day of June, 2005.

H.B. 1336 **Session Law 2005-93**

AN ACT TO PROHIBIT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN MOTOR FUELS, TO DIRECT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND THE COMMISSIONER OF AGRICULTURE TO STUDY THE FEASIBILITY AND ADVANTAGES OF A COORDINATED APPROACH TO THE PHASEOUT OF MTBE IN THE SOUTHEAST REGION OF THE UNITED STATES, AND TO DIRECT THE SECRETARY AND THE COMMISSIONER TO WORK COOPERATIVELY

WITH SOUTHEASTERN STATES TO DEVELOP AND IMPLEMENT A REGIONAL APPROACH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-26.3. MTBE in motor fuels prohibited.**

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

(1) 'MTBE' means the fuel additive methyl tertiary butyl ether.

(2) 'Motor fuel' has the same meaning as in G.S. 105-449.60.

(b) Prohibition; De Minimis Exception. – No person shall knowingly add MTBE to any motor fuel manufactured, distributed, stored, sold, or offered for sale in this State. No person shall manufacture, distribute, store, sell, or offer for sale motor fuel that contains a concentration of MTBE of more than one-half of one percent (0.5%) by volume in this State. The presence of MTBE in a motor fuel caused solely by incidental commingling of the motor fuel with other motor fuel that contains MTBE during transfer or storage of the motor fuel does not constitute a violation of this section.

(c) Transportation Through State Not Prohibited. – This section shall not be construed to prohibit the transport of motor fuel containing MTBE through this State.

(d) Rules. – The Gasoline and Oil Inspection Board shall adopt rules to implement this section."

SECTION 2. The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall jointly study the feasibility and advantages of a coordinated regional approach for the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel in the southeast region of the United States. The study shall consider the potential impacts on fuel supply and availability and the potential benefits and costs associated with the use of MTBE. In the course of the study, the Secretary and the Commissioner shall consult with the following:

(1) Other southeastern states, including Alabama, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, and Virginia.

(2) Refiners, suppliers, distributors, transporters, and retailers of motor fuel and liquid fuel pipeline operators.

(3) Consumer, environmental, and other public interest groups.

(4) The United States Environmental Protection Agency and other relevant governmental agencies.

SECTION 3. The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall work cooperatively with other southeastern states to develop and implement a coordinated approach to the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel in the southeast region consistent with G.S. 119-26.3, as enacted by Section 1 of this act.

SECTION 4. The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall jointly report on the results of the study required by Section 2 of this act and on progress in developing a coordinated regional approach to the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel pursuant to Section 3 of this act to the Environmental Review Commission. The Secretary and Commissioner shall submit an interim report on or before 1 March 2006 and a final report, including any findings and recommendations, on or before 1 March 2007.

SECTION 5. Section 1 of this act becomes effective 1 January 2008. Sections 2 through 5 of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:04 p.m. on the 21st day of June, 2005.

H.B. 862 **Session Law 2005-94**

AN ACT TO MAKE THE LAW PROHIBITING THE REMOVAL OF ELECTRONIC COLLARS FROM DOGS APPLY STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-401.17(d) is repealed.

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 2005.

Became law upon approval of the Governor at 9:05 p.m. on the 21st day of June, 2005.

S.B. 494 **Session Law 2005-95**

AN ACT TO ENCOURAGE DEPLOYMENT OF COMPETITIVE BROADBAND SERVICE BY PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2 is amended by adding a new subsection to read:

"(b1) Broadband service provided by public utilities as defined in G.S. 62-3(23)a.6. is sufficiently competitive and shall not be regulated by the Commission."

SECTION 2. G.S. 62-3 reads as rewritten:

"§ **62-3. Definitions.**

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

(1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision.

~~(1)~~ (1a) "Broker," with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as

one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

~~(1a)~~ (1b) "Bus company" means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.

…."

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

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law upon approval of the Governor at 9:07 p.m. on the 21st day of June, 2005.

H.B. 664 **Session Law 2005-96**

AN ACT TO MAKE IT UNLAWFUL FOR ANY PERSON TO FALSIFY, OR DIRECT ANOTHER TO FALSIFY, A HIGHWAY CONSTRUCTION INSPECTION REPORT OR TEST REPORT REQUIRED BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-13.2 reads as rewritten:

"§ **136-13.2. Falsifying highway inspection reports.**

(a) Any ~~employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation,~~ person who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any ~~employee, supervisor, or officer of the Department of Transportation~~ person who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:07 p.m. on the 21st day of June, 2005.

H.B. 1189 **Session Law 2005-97**

AN ACT TO PROTECT FONTANA LAKE AND THE WATERS DRAINING TO THE NORTH SHORE OF FONTANA LAKE.

Whereas, Fontana Lake in Graham and Swain Counties provides drinking water and over $4,700,000 in annual recreational benefits to the citizens of North Carolina; and

Whereas, Graham and Swain Counties have adopted ordinances to require all houseboats on Fontana Lake to have permanent toilets and permanent wastewater holding tanks to protect public health and water quality; and

Whereas, Graham and Swain Counties, with financial assistance from the Clean Water Management Trust Fund, Appalachian Regional Commission, and Tennessee Valley Authority, are currently investing $738,200 to provide facilities to pump and treat wastewater from the houseboats on Fontana Lake; and

Whereas, Swain County and Bryson City are currently investing $253,550 to remove failing septic tanks on Bryson Branch, a tributary of the Tuckaseegee River, upstream from Fontana Lake; and

Whereas, Fontana Lake has excellent water quality that must be maintained for the benefit of the citizens of Graham and Swain Counties and for the citizens of North Carolina; and

Whereas, Forney Creek, Eagle Creek, and other creeks that drain to the north shore of Fontana Lake are classified as Trout Waters, may provide habitat for federally and State-listed endangered species, and are in fact unique and special waters of exceptional State and national recreational and ecological significance which require special protection to maintain their existing uses; and

Whereas, Forney Creek, Eagle Creek, and other creeks that drain to the north shore of Fontana Lake are renowned for exceptional trout fishing in the Eastern United States and have attracted notable anglers including author Horace Kephart, Governor Luther Hodges, United States Secretary of the Interior Stewart Udall, Wildlife Resources Commissioner T. N. Massie, and others; and

Whereas, water quality data for Forney Creek documents that the creek has excellent water quality and qualifies to be classified as outstanding resource waters; and

Whereas, the development and implementation of an outstanding resource waters management strategy for the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, would benefit the water quality in Fontana Lake; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Management Commission shall initiate a rule-making proceeding no later than 1 September 2005 to adopt rules to reclassify the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, as outstanding resource waters pursuant to G.S. 143-214.1.

SECTION 2. Pending the outcome of the rule-making proceeding required by Section 1 of this act, the minimum management strategies set out in 15A NCAC 2B.0225(c) shall apply to the watersheds described in Section 1 of this act.

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

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:10 p.m. on the 21st day of June, 2005.

H.B. 1226 **Session Law 2005-98**

AN ACT TO CLARIFY THE LAW REGARDING INSPECTION, REVIEW, AND EXAMINATION OF PRISON FACILITIES CONSTRUCTED THROUGH LEASE-PURCHASE AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-37.2 is amended by adding a new subsection to read:

"(k) Upon completion of the construction of a facility authorized by this section and the commencement of the State's leasehold interest pursuant to the terms of a valid lease-purchase agreement:

(1) The facility shall not be subject to county or municipal building codes and requirements and shall not be subject to inspection by any county or municipal authorities under G.S. 143-135.1.

(2) The Department of Administration may exercise all powers and perform all duties set forth in G.S. 143-341 regarding the facility.

(3) The Commissioner of Insurance shall conduct the inspections, reviews, and examinations of the facility set forth in G.S. 58-31-40 and shall conduct electrical inspections of the facility pursuant to G.S. 143-143.2."

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

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:10 p.m. on the 21st day of June, 2005.

H.B. 786 **Session Law 2005-99**

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE DEALERS LICENSING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-287(a) reads as rewritten:

"(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of ~~each~~ the dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an established salesroom."

SECTION 2. G.S. 20-288(c) reads as rewritten:

"(c) **(Effective until January 1, 2006)** All licenses that are granted shall expire unless sooner revoked or suspended, on June 30 of the year following date of issue.

(c) **(Effective January 1, 2006)** All licenses that are granted shall ~~expire~~ be for a period of one year ~~from the date issued~~ unless sooner revoked or suspended. The Division shall vary the expiration dates of all licenses that are granted so that an equal number of licenses expire at the end of each month, quarter, or other period consisting of one or more months to coincide with G.S. 20-79(c)."

SECTION 3. G.S. 20-290 reads as rewritten:

"§ **20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.**

(a) The license of a motor vehicle dealer shall list each of the dealer's established salesrooms in this State. A license of a manufacturer, factory branch, distributor, distributor branch, or wholesaler shall list each of the license holder's places of business in this State. A license shall be conspicuously displayed at each place of business. In the event the location of a business changes, the Division shall endorse the change of location on the license, without charge.

(b) Each dealer shall keep a current list of his licensed salesmen, showing the ~~names, addresses, and serial numbers of their licenses,~~ name of each licensed salesman, posted in a conspicuous place in each place of business.

(c) Whenever any licensee places an advertisement in any newspaper or publication, the ~~type and serial number of license~~ licensee's name shall appear ~~therein.~~ in the advertisement."

SECTION 4. G.S. 20-291 reads as rewritten:

"§ **20-291. Representatives to carry license and display it on request; license to name employer.**

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ~~one-half~~ the fee set in G.S. 20-289 for an annual license."

SECTION 5. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:11 p.m. on the 21st day of June, 2005.

H.B. 878 **Session Law 2005-100**

AN ACT TO ESTABLISH THE CONFERENCE OF CLERKS OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new Subchapter to read:

"**SUBCHAPTER XV. CONFERENCE OF CLERKS OF SUPERIOR COURT.**

"Article 63.

"Conference of Clerks of Superior Court.

"**§ 7A-805. Establishment and purpose.**

There is created the Conference of Clerks of Superior Court of North Carolina, of which each clerk of superior court is a member. The purpose of the Conference is to assist in improving the administration of justice in North Carolina by coordinating the efforts of the various clerks of superior court, by assisting them in the administration of their offices, and by exercising the powers and performing the duties provided for in this Article.

"**§ 7A-806. Annual meetings; organization; election of officers.**

(a) Annual Meetings. – The Conference shall meet each summer and winter at a time and place selected by the President of the Conference.

(b) Election of Officers. – Officers of the Conference are a President, two Vice Presidents, a Secretary, a Treasurer, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual summer conference and take office on July 1 immediately following their election.

(c) Executive Committee. – The Executive Committee of the Conference consists of the President, the two Vice Presidents, the Secretary, the Treasurer, and seven other members of the Conference. One of these seven members shall be the immediate past president if there is one and that past president continues to be a member.

(d) Organization and Functioning; Bylaws. – The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws shall state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws shall set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend. – The President or the Executive Committee may call a meeting of the Conference upon 10 days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. A member should attend each meeting of the Conference and the Executive Committee of which he is given notice. Members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees.

"**§ 7A-807. Powers of Conference.**

(a) The Conference may:

(1) Cooperate with citizens and other public and private agencies to promote the effective administration of justice.

(2) Develop advisory manuals to assist in the organization and administration of their offices, case management, calendaring, case tracking, filing, and office procedures.

(3) Work with the cooperation of the Administrative Office of the Courts and the Institute of Government of the School of Government at UNC-Chapel Hill to provide education and training programs for the clerks of superior court and their staff.

(b) The Conference may not adopt rules pursuant to Chapter 150B of the General Statutes.

"**§ 7A-808. Executive secretary; clerical support.**

The Conference may employ an executive secretary and any necessary supporting staff to assist it in carrying out its duties."

SECTION 2. The organizational meeting of the Conference of Clerks of Superior Court shall be convened by the Director of the Administrative Office of the

Courts as soon as feasible. Officers elected at that organizational meeting shall serve until their successors take office July 1, 2006.

SECTION 3. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 16th day of June, 2005.

Became law upon approval of the Governor at 9:15 p.m. on the 21st day of June, 2005.

S.B. 507 **Session Law 2005-101**

AN ACT TO PROVIDE THAT AN OFFENSE COMMITTED AGAINST OR THAT PROXIMATELY CAUSES SERIOUS INJURY TO A SOCIAL WORKER IS AN AGGRAVATING FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d)(6) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

…

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law upon approval of the Governor at 9:17 p.m. on the 21st day of June, 2005.

H.B. 658 **Session Law 2005-102**

AN ACT TO ESTABLISH A PROFESSIONAL DEVELOPMENT PROGRAM FOR CODE-ENFORCEMENT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9C of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-151.13A. Professional development program for officials.**

(a) As used in this section, "official" means a qualified Code-enforcement official as that term is defined in G.S. 143-151.8.

(b) The Board may establish professional development requirements for officials as a condition of the renewal or reactivation of their certificates. The purposes of these professional development requirements are to assist officials in maintaining professional competence in their enforcement of the Code and to assure the health, safety, and welfare of the citizens of North Carolina. An official subject to this section shall present

evidence to the Board at each certificate renewal after initial certification, that during the 12 months before the certificate expiration date, the official has completed the required number of credit hours in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board but shall not be more than six credit hours.

(c) The Board may require an individual who earns a certificate under programs established in G.S. 143-151.13 to complete professional development courses, not to exceed six hours in each technical area of certification, within one year after that individual is first employed by a city or county inspection department.

(d) As a condition of reactivating a standard or limited certificate, the Board may require the completion of professional development courses within one year after reemployment as an official as follows:

(1) An individual who has been on inactive status for more than two years and who has not been continuously employed by a city or county inspection department during the period of inactive status shall complete professional development courses not to exceed 12 hours for each technical area in which the individual is certified.

(2) An individual who has been on inactive status for more than two years and who has been continuously employed by a city or county inspection department during the period of inactive status shall complete professional development courses not to exceed six hours for each technical area in which the individual is certified.

(3) An individual who has been on inactive status for two years or less shall complete professional development courses not to exceed four hours for each technical area in which the individual is certified.

(e) The Board may, for good cause shown, grant extensions of time to officials to comply with these requirements. An official who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the official has satisfactorily completed the required professional development courses, is in compliance with this section.

(f) The Board may adopt rules to implement this section, including rules that govern:

(1) The content and subject matter of professional development courses.

(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.

(3) The methods of instruction.

(4) The computation of course credit.

(5) The ability to carry-forward course credit from one year to another.

(6) The waiver of or variance from the professional development required for hardship or other reasons.

(7) The procedures for compliance and sanctions for noncompliance."

SECTION 2. The Code Officials Qualification Board shall initiate development of the Code officials' professional development program established pursuant to this act no later than October 1, 2005. The program shall be developed for implementation no later than January 1, 2006.

SECTION 3. This act is effective when it becomes law and applies to certificates issued or renewed on or after January 1, 2006.

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law upon approval of the Governor at 9:19 p.m. on the 21st day of June, 2005.

S.B. 988 **Session Law 2005-103**

AN ACT TO TRANSFER THE NORTH CAROLINA CENTER FOR APPLIED TEXTILE TECHNOLOGY TO GASTON COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Center for Applied Textile Technology is transferred from the Community Colleges System Office to Gaston College. The transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6(a).

SECTION 2. Article 6 of Chapter 115D of the General Statutes is repealed.

SECTION 3. Chapter 115D of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"North Carolina Center for Applied Textile Technology at Gaston College.

"**§ 115D-67.1. Purpose of the Center.**

The purpose of the North Carolina Center for Applied Textile Technology is to develop a world-class workforce for the textile industry in North Carolina; support the textile industry by identifying problems confronting the industry and assisting the industry in solving them; garner support from the textile industry for the work of the Center; and serve as a statewide center of excellence that serves all components of the textile industry.

"**§ 115D-67.2. Advisory Board.**

(a) The Advisory Board to the North Carolina Center for Applied Textile Technology is hereby established. The purpose of the Advisory Board is to assist in the advancement and administration of the Applied Textile Technology Center.

(b) The Advisory Board shall consist of 14 members:

(1) The President of Gaston College, who shall serve ex officio;

(2) Four members appointed by the North Carolina Manufacturers Association, Inc.;

(3) Two members appointed by the board of the North Carolina Center for Applied Textile Technology Foundation;

(4) Two members appointed by the board of trustees of Gaston College;

(5) Three members appointed by the State Board of Community Colleges;

(6) One member appointed by the dean of the College of Textiles at North Carolina State University; and

(7) The Director of the Hosiery Technology Center at Catawba Valley Community College who shall serve ex officio as a nonvoting member.

The appointing entities shall attempt to appoint members who are distributed geographically throughout the State; members representing large and small companies; and members from each segment of the diverse textile industry including spun yarn manufacturing, filament yarn manufacturing, knitting, weaving, dyeing and finishing, apparel, nonwoven, technical/medical textiles, and fiber producers.

(c) In order for the terms of members to be staggered, one initial member appointed by the North Carolina Manufacturers Association, Inc., one member

appointed by the North Carolina Center for Applied Textile Technology Foundation, one member appointed by the board of trustees of Gaston College, and two members appointed by the State Board of Community Colleges shall serve for two-year terms. The remainder of the initial appointees shall serve for four-year terms. Subsequent terms shall be for four years. Initial terms shall begin July 1, 2005.

Members may serve for no more than two consecutive four-year terms. Members appointed to an initial term of two years and members appointed to fill a vacancy may serve two consecutive four-year terms after the expiration of their term of less than four years.

All vacancies occurring on the board shall be filled for the remainder of the unexpired term by the appointing authority making the original appointment.

Members shall receive per diem, travel, and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) The Advisory Board is a public body as defined in G.S. 143-318.10(b) and is subject to all provisions of G.S. 143-318.9 through G.S. 143-318.18.

"**§ 115D-67.3. Director and other Center personnel.**

The President of Gaston College shall appoint an individual to serve as the director of the Center from a list of two or more candidates recommended by the Advisory Board. If the President rejects the recommended candidates, the Advisory Board shall submit two or more additional candidates. The director, after consultation with the Advisory Board and subject to the approval of the President of Gaston College, shall select other staff members of the Center. The director and other staff members of the Center are employees of Gaston College and are subject to the personnel policies of Gaston College.

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes."

SECTION 4. G.S. 115D-2(3) reads as rewritten:

"**§ 115D-2. Definitions.**

As used in this Chapter:

…

(3) The term "institution" refers to any institution established pursuant to this ~~Chapter except for the North Carolina Center for Applied Textile Technology.~~Chapter."

SECTION 5. G.S. 115D-58.14(a) reads as rewritten:

"(a) Community colleges ~~and the Center for Applied Textile Technology~~ may purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; and

(2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1."

SECTION 6. The Director of the North Carolina Center for Applied Textile Technology shall serve ex officio as a nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College.

SECTION 7. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law upon approval of the Governor at 9:20 p.m. on the 21st day of June, 2005.

H.B. 1320 **Session Law 2005-104**

AN ACT TO REQUIRE DISCLOSURES OF CERTAIN MONETARY TRANSMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ **53-208.22A. Disclosures of transmissions.**

(a) At the time of a monetary transmission transaction to a location outside of the United States, the licensee shall provide a receipt to the customer. The receipt shall state clearly (i) the amount of funds presented for transmission and any fee charged by the licensee and (ii) a toll-free telephone number or a local number that a customer can access at no charge to receive information about a monetary transmission.

(b) If the rate of exchange for a monetary transmission to be paid in the currency of another country is fixed by the licensee for a transaction at the time the monetary transmission is initiated, the receipt shall also state:

(1) The rate of exchange for that transaction.

(2) The amount to be paid in the foreign currency.

(3) The period, if any, in which the payment shall be made in order to qualify for the fixed rate of exchange.

(c) If the rate of exchange for a monetary transmission to be paid in the currency of another country is not fixed at the time the monetary transmission is initiated, the receipt shall also disclose that the rate of exchange for the transaction will be set at the time the recipient of the monetary transmission receives the funds in the foreign country.

(d) The licensee shall provide the disclosures required by this section to the customer before completing the transaction if the customer requests the disclosures."

SECTION 2. This act becomes effective October 1, 2005, and applies to transactions occurring on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 2005.

Became law upon approval of the Governor at 9:21 p.m. on the 21st day of June, 2005.

S.B. 450 **Session Law 2005-105**

AN ACT TO ENABLE THE RUTHERFORD AIRPORT AUTHORITY TO LEASE PROPERTY FOR FIFTY YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 1971-335 reads as rewritten:

"**Sec. 4.** The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of the County and for any of such purposes, to purchase, improve, own, hold, lease and/or operate real or personal property.

(2) To borrow money and to issue bonds and to secure the same by mortgages, with the consent of the Rutherford Board of County Commissioners upon any property held or to be held by it.

(3) To sue or be sued in the name of said Airport Authority, to acquire by purchase and to hold lands for the purpose of constructing, maintaining or operating any airport within the limits of said County, and to make such contracts and to hold such personal property as may be necessary for the exercise of the powers of the Airport Authority. The Airport Authority may acquire by purchase, or otherwise, any existing lease, leasehold right or other interest in any existing airport located in the County.

(4) To charge and collect reasonable and adequate fees and rents for the use of the airport property or for services rendered in the operation thereof.

(5) To make all reasonable rules and regulations as it deems necessary for the proper maintenance and operation of the airport and provide penalties for the violation of such rules and regulations; provided, said rules and regulations and schedules of fees be not in conflict with the laws of the State of North Carolina, and the rules and regulations of the Civil Aeronautics Administration of the Federal Government.

(6) To issue revenue bonds or other securities and obligations for the purpose of providing funds for the construction, maintenance, purchase, improvement and operation of the airports, landing fields or other facilities. The bonds, if and when so issued, shall be denominated "Rutherford Airport Authority Bonds", shall be issued in such form and denomination and shall mature at such time or times, not exceeding fifty (50) years after their date, and shall bear such rate of interest, payable annually or semi-annually, as the Airport Authority may determine. The bonds shall be signed by the chairman of the Airport Authority and the corporate seal affixed or impressed upon each bond, and attested by the secretary of the board. The coupons to be attached to said bonds shall bear the facsimile signature of the chairman of the Airport Authority. Such bonds, notes or securities issued for the purpose, or purposes above set out, may be issued and sold with the approval of the County Commissioners, but the sale shall be made under the supervision, and with the approval of the Local Government Commission.

Bonds and notes issued under this act shall be exempt from all State, Federal, County, or Municipal taxes or assessments, direct or indirect, general or special, and the interest paid on such bonds or notes shall not be subject to taxation as income. The bonds, notes or other securities shall not be obligations of the County of Rutherford, but the Airport Authority is authorized and empowered to pledge the revenues, rents, income and tolls arising out of the use of any airport property or any specific part of said airport property until such time as the sums borrowed therefor are fully amortized and repaid. The bonds or other securities which the Airport may incur shall be issued and incurred upon such other terms, covenants and conditions as the Airport Authority may deem proper.

(7) To sell, or otherwise dispose of, any property, real or personal, belonging to the Airport Authority, but no sale of real property shall be made without the approval of the Board of County Commissioners.

(8) To purchase such insurance as the Airport Authority shall deem necessary.

(9) To invest or reinvest, subject to the approval of the Local Government Commission, any of its funds in either bonds, notes or certificates of indebtedness of the United States of America, or in bonds or notes of any agency or instrumentality of the United States of America, the payment of principal and interest of which is guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in bonds of any county, city or town of North Carolina, which have been approved by the Local Government Commission.

(10) To purchase any of its outstanding bonds or notes.

(11) To operate, own, lease, control, regulate or grant to others the right to operate on any airport premises, restaurants, agricultural fair, motion picture shows, and other amusements.

(12) To lease for a term not to exceed ~~twenty-five (25) years,~~ fifty (50) years, and for purposes not inconsistent with the grants and agreements under which the airport is held, real or personal property under the supervision of or administered by the Airport Authority.

(13) To contract with persons, firms or corporations for terms not to exceed twenty-five (25) years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities not inconsistent with said grant agreements under which the airport property is held, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

(14) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed ~~twenty-five (25) years;~~ fifty (50) years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized."

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

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law on the date it was ratified.

S.B. 883 **Session Law 2005-106**

AN ACT TO AMEND THE NOTIFICATION REQUIREMENT FOR MECKLENBURG COUNTY REGARDING THE DISPOSITION OF A SEIZED FIREARM AND TO PROVIDE THAT IN MECKLENBURG COUNTY EITHER THE SHERIFF OR THE CHIEF LAW ENFORCEMENT OFFICER OF THE AGENCY WITH JURISDICTION TO ENFORCE THE LAW WHERE THE FIREARM WAS SEIZED MAY DESTROY THE FIREARM IN ACCORDANCE WITH A COURT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.1 reads as rewritten:

"§ **15-11.1. Seizure, custody and disposition of articles; exceptions.**

(a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in

any trial. Upon application by the lawful owner or a person, firm or corporation entitled to possession or upon his own determination, the district attorney may release any property seized pursuant to his lawful authority if he determines that such property is no longer useful or necessary as evidence in a criminal trial and he is presented with satisfactory evidence of ownership. If the district attorney refuses to release such property, the lawful owner or a person, firm or corporation entitled to possession may make application to the court for return of the property. The court, after notice to all parties, including the defendant, and after hearing, may in its discretion order any or all of the property returned to the lawful owner or a person, firm or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

(b) In the case of unknown or unapprehended defendants or of defendants willfully absent from the jurisdiction, the court shall determine whether an attorney should be appointed as guardian ad litem to represent and protect the interest of such unknown or absent defendants. Appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law-enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law.

(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district ~~attorney,~~ attorney or the legal representative for the agency storing the firearm, after notice to all parties known or believed by the district attorney or the agency's legal representative to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm.

If the owner is not known, then notice may be provided by publishing a notice in a newspaper of Mecklenburg County. The published notice shall include the following: (i) a statement that a firearm being stored by the agency is to be disposed of, and (ii) a reference to either an electronic Web site available to the general public or a list posted in a public place that provides a specific description of the firearm to be disposed of, sufficient in detail to identify the firearm. The firearm shall not be disposed of earlier than 30 days after the notice appears in the newspaper.

The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the

same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of ~~the county in which the firearm was seized~~ Mecklenburg County or the chief law enforcement officer storing the firearm, or by ~~his~~ the duly authorized ~~agent.~~ agent of either the sheriff or the chief law enforcement officer as appropriate. The sheriff or the chief law enforcement officer, as appropriate, shall maintain a record of the destruction of the firearm.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance.

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith."

SECTION 2. This act applies only to Mecklenburg County.

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

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law on the date it was ratified.

H.B. 1055 **Session Law 2005-107**

AN ACT TO PROVIDE THAT THE PROCEDURE FOR FILLING A VACANCY IN THE BOARD OF EDUCATION OF JONES COUNTY IS THE SAME AS THE CURRENT PROCEDURE FOR FILLING A VACANCY ON THE BOARD OF COMMISSIONERS OF JONES COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 349 of the 1973 Session Laws is amended by adding a new section to read:

"Section 3.1. (a) If a vacancy occurs on the board of education, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any five registered voters of the county. If for any other reason the remaining members of the board do not fill a vacancy within 60 days after the day the vacancy occurs, the superintendent shall immediately report the vacancy to the clerk of superior court of the county. The clerk of superior court shall, within 10 days after the day the vacancy is reported, fill the vacancy.

(b) If the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated, either to the remainder of the unexpired term or, if the term has expired, to a full term.

(c) If a vacancy occurs on the board, and subsection (b) of this section requires that a person shall be elected to the seat vacated for the remainder of the unexpired term and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party, and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by Chapter 163 of the General Statutes.

(d) To be eligible for appointment to fill a vacancy, a person must be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party. The board of education or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the board nor the clerk of the superior court is bound by the committee's recommendation."

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

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law on the date it was ratified.

H.B. 9 **Session Law 2005-108**

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Thomasville:

Beginning at a 100-D nail, said nail being the right-of-way intersection of N.C. Highway 109 and the exit ramp of U.S. Highway 29-70 (Business 85), said nail having North Carolina Grid Coordinates of North = 785,442.855 feet and East = 1,676,141.680 feet (North American Datum of 1983/86); thence from said point of beginning with the eastern right-of-way of N.C. Highway 109 North 48º06'36" West 108.83 feet to an aluminum disk; thence North 48º03'03" West 180.76 feet to a concrete right-of-way monument; thence North 35º24'43" West 220.66 feet to a concrete right-of-way monument; thence North 36º31'35" West 492.55 feet to a concrete right-of-way monument; thence North 35º21'29" West 111.69 feet to a 1/2-inch rebar (found), on the eastern right-of-way of N.C. Highway 109, said rebar having North Carolina Grid Coordinates of North = 786,303.013 feet and East = 1,675,440.628 feet (North American Datum of 1983/86), said rebar being the intersection of the eastern right-of-way of N.C. Highway 109 and the eastern line of Donnie Shuller as described

in Deed Book 528 page 79, said iron also being the western corner of Collene Rickard as described in Deed Book 528 Page 78 in said highway right-of-way; thence with Shuller and Rickard's line North 04º43'50" East 76.39 feet to 3/4-inch iron pipe (found), said iron being Shuller's northeast corner and a corner of Lorene V. Rains and Mona Teague as described in Deed Book 593 Page 919 in Rickard's western line; thence with Rickard's western line North 04º42'11" East 235.64 feet to a 3/4-inch iron pipe at a bent axle (found), said iron being Rickard's northwest corner and a corner of Lorene V. Rains and Mona Teague, said iron having North Carolina Grid Coordinates of North = 786,613.961 feet and East = 1,675,466.247 feet (North American Datum of 1983/86); thence with Rickard's northern line and Rains and Teague's southern line South 65º37'04" East 313.68 feet to a 5-inch axle (found), said axle being Rickard's northeast corner and the northwest corner of Joe Don Cline as described in Deed Book 445 page 499; thence with Cline's northern line and Rains and Teague's southern line South 63º02'16" East 1027.31 feet to 4-inch iron pipe, said iron having North Carolina Grid Coordinates of North = 786,018.737 feet and East = 1,676,667.484 feet (North American Datum of 1983/86); thence South 43º26'21" East 179.53 feet to a point; thence South 59º44'24" East 39.19 feet to an iron pipe; thence South 44º01'03" East 109.89 feet to a point, said point having North Carolina Grid Coordinates of North = 785,789.632 feet and East = 1,676,901.107 feet (North American Datum of 1983/86); thence South 28º18'34" West 21.71 feet to a point; thence South 31º45'34" West 153.11 feet to a point in the northern right-of-way of the exit ramp of U.S. Highway 29-70 (Business 85), said point having North Carolina Grid Coordinates of North = 785,640.346 feet and East = 1,676,810.229 feet (North American Datum of 1983/86); thence with the said exit ramp right-of-way South 84º40'29" West 314.10 feet to a point, said point being the P.C. of a curve to the left; thence with the said curve having a radius of 874.34 feet, through a central angle of 21º46'14", an arc distance of 332.22 feet and a chord bearing and distance of South 66º27'09" West 330.22 feet to a point, said point being the P.T. of the said curve; thence South 55º34'01" West 64.43 feet to said point of beginning. Containing 18.263 acres, more or less.

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law on the date it was ratified.

H.B. 131 **Session Law 2005-109**

AN ACT TO AUTHORIZE SEVERAL ADDITIONAL COUNTIES TO USE A TAX CERTIFICATION PROCESS TO ASSIST IN THE COLLECTION OF DELINQUENT PROPERTY TAXES.

The General Assembly of North Carolina enacts:

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

"§ **161-31. Tax certification.**

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

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

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law on the date it was ratified.

H.B. 345 **Session Law 2005-110**

AN ACT REQUIRING COMPANY POLICE AGENCIES TO NOTIFY THE CITY OF WINSTON-SALEM POLICE DEPARTMENT WHEN THEY ARE PROVIDING ON-SITE POLICE SECURITY PERSONNEL SERVICES WITHIN THE DEPARTMENT'S JURISDICTION AND TO PROVIDE THE DEPARTMENT WITH CERTAIN INFORMATION ON ARRESTS MADE BY THE AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74E-13 is amended by adding the following new subsection to read:

"(d) Prior to the provision of services, a company police agency certified under this Chapter shall notify the Winston-Salem Police Department that it is providing on-site police security personnel services for persons or property within the Police Department's territorial jurisdiction. The notification shall be in writing and shall include the names of the companies or individuals receiving services, the physical locations where services will be provided, and the beginning and ending dates for the contracts for each location.

Within 48 hours of any arrest made by a company police officer within the Winston-Salem Police Department's territorial jurisdiction, the agency shall provide to the Police Department the following information:

(1) The name and address of the individual arrested;

(2) The offense for which the individual was arrested; and

(3) The date and location of the offense.

As used in this act, the term 'territorial jurisdiction' includes the Winston-Salem Police Department's jurisdiction as defined in G.S. 160A-286."

SECTION 2. This act applies only to the City of Winston-Salem and company police agencies providing on-site police security personnel services for

persons or property within the territorial jurisdiction of the Winston-Salem Police Department.

SECTION 3. This act becomes effective July 1, 2005. It applies to all contracts for services existing on or commencing after the effective date and to arrests made on or after the effective date.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law on the date it was ratified.

H.B. 581 **Session Law 2005-111**

AN ACT AUTHORIZING THE CITY OF BELMONT TO UTILIZE THE PETITION PROCEDURE FOR STREET LIGHTING AS IT IS CURRENTLY AUTHORIZED FOR STREET OR SIDEWALK IMPROVEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-216 is amended by adding a new subdivision to read:

"(4a) Providing street lights and street lighting;".

SECTION 2. Assessments made under G.S. 160A-216(4a), as enacted by this act, shall be governed by the same petition requirements of G.S. 160A-217 as if it were an assessment for street or sidewalk improvements.

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

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law on the date it was ratified.

H.B. 743 **Session Law 2005-112**

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF EAST SPENCER.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the Town of East Spencer:

Beginning at a NC DOT right-of-way monument on the south east side of interstate 85 (NC DOT project number 8.1631511, deed book 953 page 749) said right-of-way monument being S 89°05'17" E 986.48' from N.C. Geodetic Survey Monument "Chanti", thence following the I-85 right-of-way in a north east direction, five lines: (1) N 33°53'02" E 433.52' to a NC DOT right-of-way monument; (2) with a curve to the right having a radius of 3719.72', a length of 536.37', a chord bearing of N 38°02'45" E, and a chord distance of 535.90' to a NC DOT right-of-way monument; (3) N 42°25'18" E 865.59' to a NC DOT right-of-way monument; (4) with a curve to the left having a radius of 8769.37', a length of 1530.66', a chord bearing of N 37°09'18" E, and a chord distance of 1528.71' to a NC DOT right-of-way monument; (5) continuing with a curve to the left having a radius of 8769.37', a length of 692.04', a chord bearing of N 29°53' 38" E, and a chord distance of 691.86' to a point in the center line of Town Creek, thence thirteen lines with the center of Town Creek: (1) N 58°16'24" E 29.16' to a point;

(2) N 81°15'05" E 196.78' to a point; (3) N 68°16'19" E 152.41' to a point; (4) N 87°18' 10" E 60.68' to a point; (5) S 67°27'17" E 411.35' to a point; (6) S 70°39'56" E 166.61' to a point; (7) S 70°57'43" E 148.95' to a point; (8) S 68°54'14" E 160.63' to a point; (9) S 71°34'36" E 142.36' to a point; (10) S 85°47'04" E 127.76' to a point; (11) S 77°41'38" E 114.32" to a point; (12) S 72°09'01" E 155.52' to a point; (13) S 72°37'10" E 44.94' to a point in the western line of Paul B. Allen, III (deed book 645 page 677), thence three lines with Allen: (1) S 08°55'33" W 422.22' (passing an existing iron pin at 50.00') to an existing iron pin; (2) S 85°31'58" E 658.68' to a new iron pin set in a tree stump; (3) S 03°44'10" W 303.60' to an existing stone in the line of the Rowan Hatchery & Poultry Farm, thence four lines with said Farm: (1) S 09°11'14" W 717.39' to an existing iron pin; (2) N 85°23'12" W 704.95" to an existing iron pin; (3) S 04°34'51" W 648.60' to an existing iron pin in an asphalt drive; (4) S 04°40'15" W 1763.56' to an existing iron pin in the right-of-way of Old Union Church Road, S.R. 1915, thence with a curve to the left having a radius of 642.96', a curve length of 353.75' and having a chord bearing of N 47°40'39" W and a chord distance of 349.30' to an existing concrete monument thence with the northern right-of-way of Old Union Church Road N 79° 33'22" W 344.85' to an existing concrete monument, thence S 07°23' 56" W 30.00' to an existing concrete monument, thence continuing S 07°23'56" W 20.00' to a point in the center line of Old Union Church Road, thence seven lines with center line: (1) N 82° 34'57" W 198.24' to a point; (2) N 82°27'51" W 532.09' to a point; (3) N 82°42'20" W 665.17' to a point; (4) N 82°56'03" W 284.79' to a point; (5) N 83°01'43" W 343.87' to a point; (6) N 81°31'11" W 153.51' to an existing p.k. nail; (7) N 79°56'03" W 412.69' to an existing p.k. nail, thence N 04°20'18" E 60.23' to an NC DOT right-of-way monument, thence four lines with NC DOT project number 8.1631511: (1) N 79°47'15" W 161.26' to an NC DOT monument; (2) N 78°09'02" W 194.70' to an NC DOT monument; (3) N 65°32'59" W 268.40' to an NC DOT monument; (4) N 20°19'48" W 85.76' to an existing iron pin, a corner of East Spencer's existing corporate limits and then continuing for an additional 24.45' to the point and place of beginning and being 263.195 acres as shown on survey map titled ANNEXATION SURVEY FOR THE TOWN OF EAST SPENCER DATED 03/30/04, survey and map by Shulenburger Surveying Company, PA, reference to which is hereby made for a more particular description.

SECTION 2. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law on the date it was ratified.

H.B. 828 **Session Law 2005-113**

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF BELVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Belville.

BEGINNING in Brunswick County at a point of intersection of the west line of River Road S.E. (N.C. Highway #133 a 60-foot right-of-way) with the center of the run of Jackey's Creek; running thence from said beginning point up said run of Jackey's Creek to a point located North 69 degrees 59 minutes 20 seconds West 304.81 feet and

North 62 degrees 15 minutes 38 seconds West 196.28 feet from the preceding point. Thence leaving said run North 27 degrees 44 minutes 22 seconds East 186.00 feet to a point. Thence South 64 degrees 48 minutes 18 seconds East 439.05 feet to a point in the west line of River Road S.E. Thence along said west line as it curves to the west to the point of beginning located South 07 degrees 11 minutes 55 seconds West 98.25 feet and South 08 degrees 33 minutes 12 seconds West 76.76 feet from the preceding point. Containing 2.00 acres more or less.

SECTION 2. This act shall have no effect upon the validity of any liens of the Town of Belville for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Belville.

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law on the date it was ratified.

H.B. 451 **Session Law 2005-114**

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ANY INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES IN THE HOUSEHOLD OF A PROSPECTIVE ADOPTIVE PARENT, TO EXPAND THE PERSONS WHO ARE SUBJECT TO CRIMINAL RECORD CHECKS BY DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-3-309 reads as rewritten:

"§ **48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social ~~services.~~services and mandatory preplacement criminal checks of all individuals 18 years of age or older who reside in the prospective adoptive home.**

(a) The Department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home are checked prior to placement and, based on the criminal history, a determination is made as to ~~the individual's fitness to have responsibility for the safety and well-being of children.~~ the prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and whether other individuals required to be checked are fit for an adoptive child to reside with them in the home. The Department shall ensure that all ~~prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services~~individuals required to be checked are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services ~~may~~ shall issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services ~~determines~~ determines, pursuant to ~~G.S. 48-3-303(e)~~ G.S. 48-3-303(e),

~~that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.~~ that, based on the criminal histories, the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children or other individuals required to be checked are unfit for an adoptive child to reside with them in the home.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of ~~such a prospective adoptive parent~~any individual required to be checked under subsection (a) of this section as requested by the Department and obtained from the State and National Repositories of Criminal ~~Histories as requested by the Department.~~Histories. The Department shall provide to the Department of Justice, along with the request, the fingerprints of ~~the prospective adoptive parent~~any individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of ~~the prospective adoptive parent~~any individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, ~~a prospective adoptive parent~~any individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

"**NOTICE**

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL ~~SERVICES.~~SERVICES AND ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

"Criminal history" means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon a prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and whether other individuals required to be checked are fit for an adoptive child to reside with them in the home, ~~an individual's fitness to have responsibility for the safety and well-being of children,~~ including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal

history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well being of ~~children,~~children or have an adoptive child reside with you, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If ~~you are~~the prospective adoptive parent is denied a favorable preplacement assessment by a county department of social services as a result of ~~the~~ a criminal history ~~check,~~check as required under G.S. 48-3-309(a), ~~you~~ the prospective adoptive parent may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any ~~prospective adoptive parent~~person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor."

Refusal to consent to a criminal history check by any individual required to be checked under G.S. 48-3-309(a) is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any ~~prospective adoptive parent~~person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The Department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history ~~check in~~check. In accordance with the federal and State law regulating the dissemination of the contents of the criminal history ~~file. The~~file, the Department shall not release ~~nor~~ or disclose any portion of ~~the prospective adoptive parent's~~an individual's criminal history to the ~~prospective adoptive parent.~~prospective adoptive parent or any other individual required to be checked. The ~~Department~~ Department, however, shall ~~also~~ ensure that the ~~prospective adoptive parent~~ prospective adoptive parent or any other individual required to be checked is notified of the ~~prospective adoptive parent's~~individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

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

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and all individuals 18 years of age or older who reside in the prospective adoptive home and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

SECTION 2. G.S. 48-3-303(d) reads as rewritten:

"(d) The agency shall conduct an investigation for any criminal record as permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the ~~individual's~~ prospective adoptive parent's criminal history and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination ~~pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.~~ as to the prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and as to whether other individuals required to be checked are fit for an adoptive child to reside with them in the home."

SECTION 3. G.S. 114-19.7 reads as rewritten:

"§ **114-19.7. Criminal record checks required prior to placement ~~of prospective adoptive parents seeking to adopt~~ for adoption of a minor who is in the custody or placement responsibility of a county department of social services.**

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of ~~the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services,~~any individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the ~~prospective adoptive parent~~individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

SECTION 4. G.S. 114-19.6(a)(1) reads as rewritten:

"(a) Definitions. – As used in this section, the term:

(1) "Covered person" ~~means:~~means any of the following:

a. An applicant for employment or a current employee in a position in ~~the Department of Health and Human Services or~~ the Department of Juvenile Justice and Delinquency Prevention

who provides direct care for a client, patient, student, resident or ward of the ~~Department; or~~ Department.

b. ~~Supervises~~ A person who supervises positions in the Department of Juvenile Justice and Delinquency Prevention providing direct care ~~as outlined in sub-subdivision a. of this subdivision.~~for a client, patient, student, resident or ward of the Department.

c. An applicant for employment or a current employee in a position in the Department of Health and Human Services.

d. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Health and Human Services.

e. A person who has been approved to perform volunteer services for the Department of Health and Human Services."

SECTION 5. This act becomes effective June 24, 2005.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 3:39 p.m. on the 27th day of June, 2005.

S.B. 138 **Session Law 2005-115**

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

The General Assembly of North Carolina enacts:

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

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

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law on the date it was ratified.

S.B. 407 **Session Law 2005-116**

AN ACT TO AUTHORIZE AN INCREASE IN THE VEHICLE TAX IN MUNICIPALITIES LOCATED WHOLLY OR PARTLY IN CABARRUS COUNTY AND TO EXTEND A MORATORIUM ON ANNEXATIONS INTO THE COUNTY OF CABARRUS BY MUNICIPALITIES LOCATED PRIMARILY OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 1.(b) This section applies only to municipalities located wholly or partially in Cabarrus County. Any funds generated by a tax of over five dollars ($5.00) under this section shall be placed into a separate fund for transportation uses within the municipality and shall not be expended for any other purpose.

SECTION 2. Section 3 of S.L. 2003-326 reads as rewritten:

"**SECTION 3.** Section 1 of this act is effective when it becomes law and expires June 30, ~~2005.~~ 2006. The remainder of this act is effective when it becomes law."

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

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law on the date it was ratified.

H.B. 488 **Session Law 2005-117**

AN ACT TO UPDATE THE CHARTER OF THE TOWN OF CARY.

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF CARY

"ARTICLE I. INCORPORATION AND GENERAL POWERS

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

"Section 1.2. Enumerated powers not exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Cary shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"Section 1.3. Exercise of powers. All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or if this Charter makes no provision, as provided by ordinance or resolution of the Town Council and as provided by general law pertaining to municipal corporations.

"Section 1.4. Form of government. The form of government of the Town of Cary shall be known as the 'Council-Manager Form of Government', as set forth in Part 2 of

Article 7 of Chapter 160A of the General Statutes subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Cary from being changed as by law provided.

"ARTICLE II. CORPORATE BOUNDARIES

"Section 2.1. Existing corporate boundaries. The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated 'Map of the Town of Cary Corporate Limits' showing the corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated 'Description of Cary Corporate Limits'. Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and a description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

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

"ARTICLE III. MAYOR AND TOWN COUNCIL

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

"Section 3.2. Number and qualification of council members and mayor generally.

(a) The Town Council shall consist of six members, two of whom shall be elected at large by all the qualified voters of the Town, and four of whom shall be elected by the qualified voters of each of four single-member electoral districts, respectively, as established by the Town Council pursuant to the law. Terms of council members shall be overlapping four-year terms. In the 2001 election and quadrennially thereafter, there shall be elected, for four-year terms, one council member from electoral district A, one council member from electoral district C, and one council member from the Town at large. In the 2003 election and quadrennially thereafter, there shall be elected, for four-year terms, one council member from electoral district B, one council member from electoral district D, and one council member from the Town at large.

(b) The Mayor shall be elected by all the qualified voters of the Town, for a term of four years, in the 2003 election and quadrennially thereafter. The Mayor shall have the right to vote on all matters before the Town Council.

(c) The method of election of the Mayor and Town Council shall be the nonpartisan election and runoff method to be conducted as provided in G.S.163-293.

"Section 3.3. Legislative powers. All the legislative powers of the Town shall be vested in the Mayor and Town Council. The Mayor and Town Council shall meet at the time prescribed by law following each election, and those elected shall take the oath of office as prescribed by law to perform faithfully the duties of their respective offices. The Mayor shall have all rights, duties, and responsibilities of a councilman. A Mayor Pro Tempore shall be elected by the Town Council from among its own members and shall hold office as Mayor Pro Tempore during the pleasure of the Council. The

organization of the Council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefore, may make oath at any time thereafter.

"Section 3.5. General procedure. A majority of the members of the Town Council shall constitute a quorum. Its meetings shall be public, and the Mayor, who shall be the official head of the Town, shall, if present, preside and shall have the same power as the other members of the Council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the Mayor, the Mayor Pro Tempore of the Council shall preside, and in the absence of both, a Chairman Pro Tempore shall be chosen. The Town Clerk shall be ex officio Clerk of the Town Council, and shall keep records of its proceedings; but in case of the Clerk's temporary absence, or in case of a vacancy in the office, the Town Council may elect by ballot a temporary Clerk, who shall be sworn to the faithful discharge of his duties and may act as Clerk of the Town Council until a Town Clerk is chosen and qualified. On request of one member, the vote shall be yeas, and nays, and shall be entered upon the records.

"Section 3.6. Vacancies. Vacancies in the Town Council shall be filled by the Council for the remainder of the unexpired terms. In case of a vacancy in the office of Mayor, the remaining members of the Council shall choose from their own number his successor for the unexpired term.

"Section 3.7. Compensation. The Council may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officers may be made effective at such time as the Council may direct, but the salary of elected officers shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other Town officers and employees.

"Section 3.8. Appointments by council. The Town Council shall appoint a Town Manager, a Town Attorney, a Town Clerk, and a Town Treasurer, and may authorize the appointment of such associates or assistants to such officers as the Council may deem necessary, all who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.

"Section 3.9. Powers of Town Manager.

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government, and shall be responsible for the administration of all departments. The manager shall be appointed with regard to executive and administrative abilities only and need not be a resident of the Town when appointed. The manager shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(b) The Town Manager shall:

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

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

(3) Attend all meetings of the Council, and recommend for adoption such measures as he shall deem expedient;

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

(5) Appoint and remove all heads of departments, except those employees enumerated in Section 3.8 of this Charter, who shall be appointed by and serve at the pleasure of the Town Council.

"Section 3.10. Town Attorney. The Town Attorney shall be the legal advisor to the Town and perform such duties as may be specified by the Council or specified by law. The attorney shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The attorney shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

"Section 3.11. Town Clerk. The Town Clerk shall be the clerk to the Town Council, keep all records concerning Council actions and shall exercise those powers and duties conferred by the law and shall perform such duties as may be specified by the Council. The clerk shall be appointed with regard to merit only, and need not be a resident of the Town when appointed. The clerk shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

"Section 3.12. Town Treasurer. The Town Treasurer shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The treasurer shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance. The Town Treasurer shall be custodian of all funds of the Town.

The treasurer shall execute a bond payable to the Town, and at its expense, in such sum and with such sureties as shall be prescribed and approved by the Council conditioned upon the faithful performance of the duties of the office and proper accounting of all funds that may come into this person's possession by virtue of the office. Duties of the treasurer include:

(1) Manage the cash flows of the Town.

(2) Be responsible for the investment of excess cash under the direction of the Finance Director.

(3) Keep appropriate records for cash flow and investments.

(4) Make reports as requested by the Town Manager, the Finance Director, and the Council.

"Section 3.15. Combination of offices. The Town Council may combine the office of Town Treasurer with the office of Town Clerk in its sole discretion.

"Section 3.16. Terms of commissions, committees, and boards. The Town Council may fix the terms of members of all commissions, committees, and boards of the Town regardless of the terms established by law for particular commissions, committees or boards; to appoint the chairman or other presiding officer of each commission, committee, or board of the Town, regardless of the provisions of any law; and to limit the number of terms which any person may serve on any commission, committee, or board of the Town.

"ARTICLE VI. STREET AND SIDEWALK IMPROVEMENTS

"Section 6.1. Street improvements; assessment of cost. In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this Article.

"Section 6.2. When petition unnecessary. The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

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

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

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

"Section 6.3. Street improvement defined. For the purpose of this Article the term 'Street Improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities.

"Section 6.4. Sidewalks; assessment of cost. In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council may order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners.

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

"Section 6.5. Assessment procedure. In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Section 6.6. Effect of assessment. The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if assessed where levied under authority of general law.

"ARTICLE VII. FINANCE AND TAXATION

"Section 7.1. Custody of Town money. All monies received by the Town for and in connection with the business of the Town government shall be paid promptly into the Town depository or depositories. Such institution shall be designated by the Town Council in accordance with such regulations and subject to such requirements as to surety for deposits and interest thereon as shall be established by general law. All interest on monies belonging to the Town shall accrue to the benefit of the Town. All monies belonging to the Town shall be disbursed only in accordance with the provisions of the Local Government Budget and Fiscal Control Act.

"Section 7.2. Independent audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered pursuant to general law, who shall have no personal interest directly or indirectly in the

affairs of the Town or any of its officers. The Town Council shall select the public accountant and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Town Council.

"Section 7.4. (a) The Town of Cary shall have the right, power, and authority to impose and collect a regulatory or development fee defined as a road project fee on all new construction within the Town limits and extraterritorial jurisdiction.

(b) It is the purpose and intent of this section to provide the Town with the legal mechanism granting it the right, power, and authority to impose and collect fees to finance additional improvements within the Town limits and extraterritorial jurisdiction. These additional road improvements being caused by rapid and continued growth within the Cary area. This section provides approval to the Town to actually develop and implement such a fee system, but does not in any way, describe or detail the actual fee structure and rate classification. An extensive study will subsequently be performed to establish the basis and framework for the fee system should the system be deemed necessary in order to maintain the high level of service delivery presently available to Cary residents.

"ARTICLE VIII. WATER AND SEWER IMPROVEMENTS

"Section 8.1. Laterals included in cost. In ordering water or sewer line extensions, or both, the assessment of the cost thereof under the authority given by the General Statutes, the Town Council may include in such extensions water and sewer line laterals, and include the cost of such laterals in the total cost to be assessed upon abutting properties.

"Section 8.2. Classification and exemption. Where water or sewer lines are constructed across or through lots or tracts of land or when water or sewer lines, or both, are installed along both sides of corner lots and were or are financed in whole or in part by assessment, the Council may by uniform rule classify such lines for assessment as in its judgment will represent the benefits derived. The schedules of exemptions may be classified as to land uses (residential, business, commercial, industrial, office and institutional, agricultural, or other classifications) and shall be uniform for each such classification used; provided, however, that no schedule of exemptions may provide for exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

"Section 8.3. Alternative method of assessing. In addition to, and as alternatives to, the method provided in the General Statutes for assessing the cost of water and sewer lines and laterals, the Town Council, if in its opinion it would be more equitable to do so, may in its discretion levy any such assessments according to either of the following methods: (i) equally against each of the lots capable of being served by such line or lines, or (ii) on the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

In lieu of assessing the total cost of a particular project as herein provided, the Town Council may annually, between the first days of January and July of each year, determine the average cost of installing water and sewer mains or lines, and on the basis of such determination may make assessments on such average cost during the following fiscal year beginning July 1. The average cost of such installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and materials cost based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such lines shall not be made until after the particular assessment

project has been completed. The purpose of this section is to distribute more equitably the cost of the installation of water and sewer lines throughout the Town; to permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his property will be; and to permit the most expeditious assessment of cost against the property after completion of installation of such lines. The actual cost of acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation cost at the time of the completion of the project, such costs may be assessed separately when they are determined.

"Section 8.4. Payment of assessments. Any special assessment of the Town for any purpose amounting to less than one hundred dollars ($l00.00) shall be paid in cash not later than the next due date of Town taxes rather than in annual installments and shall bear interest as taxes.

"Section 8.5. Water and sewer development fees. In addition to water and sewer service charges and connection charges, the Town Council may establish and collect water and sewer development fees for the privilege of connecting to the Town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water and sewer mains and laterals and sewer outfalls and the replacement or enlargement of existing mains, laterals, and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, however, that the Council may establish higher water and sewer development fees for property developed or to be developed for business, commercial, industrial, or office and institutional uses than those established for residential and other uses and may base water and sewer development fees for residential property upon the number of dwelling units per acre of land.

"ARTICLE IX. REGULATORY POWERS

"Section 9.1. Zoning and subdivision regulations. Any subdivision control ordinance enacted by the Town Council pursuant to general law may also provide for the orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing, and guttering; and street and storm drainage facilities in accordance with Town standards and specifications, and to assure compliance with such requirements, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

In addition to the authority conferred upon it by general or local law, the Town of Cary may create, through the legislative process, general use zoning districts, in which a variety of uses are permitted; conditional use zoning districts, in which limited uses are permitted only upon approval by the Town; overlay zoning districts, which are applied coincidental with the general or conditional use district; and transitional zoning regulations.

The overlay zoning districts may impose additional regulations on some property within the underlying general or conditional use district and not on all properties within those districts.

A person petitioning for rezoning of a tract of land where conditional use districts or overlay districts are authorized by ordinance, may elect to request a general use district, a conditional use district, or an overlay district for the tract. If the petitioner elects to petition for the general use or overlay district zoning, and if the petition is approved, the rezoned property may be used for any of the uses permitted in the applicable general use or overlay district. If the petitioner elects to petition for conditional use district zoning, the petition must specify the actual use or uses, and all other development regulations

authorized by State law, which are intended for the property specified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district. If the petition is for conditional use district zoning, the Town Council is to approve or disapprove the petition on the basis of the specific use or uses and development regulations requested. If the petition is approved, the Town Council shall issue a conditional use permit authorizing the requested use with such reasonable conditions as the Town Council determines to be desirable in promoting public health, safety, and general welfare.

The conditions contained in a conditional use permit issued by the Town Council may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the Town Council may find appropriate or the petitioner may propose, including architectural review or controls.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and ensure that substantial justice be done.

"Section 9.2. Regulatory codes. The Town Council may make effective and enforce within the territory under its extraterritorial zoning jurisdiction and lying outside the corporate limits and within one mile thereof, all ordinances and codes of the Town regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to the General Statutes, and ordinances relating to unsafe buildings adopted pursuant to the provisions of the General Statutes. In addition, the Town Council may enforce in such area the North Carolina State Building Codes, including Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy, Existing Buildings, and Residential, all as published by the North Carolina Building Code Council. Such enforcement power shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate permit or permits be obtained from the Town; provided, the Town Council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

"Section 9.3. Underground utilities. In addition to the powers now or hereafter granted to municipalities by law, the Town Council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the Town be installed underground, whether or not the same are installed in public rights-of-way.

"Section 9.4. Electric golf carts. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town. By ordinance, the Town may require the registration of golf carts, specify the persons authorized to operate golf carts, and specify required equipment, load limits, and the hours and methods of operation of the golf carts.

"ARTICLE X. CLAIMS AGAINST THE TOWN

"Section 10.1. Settlement of claims by Town Manager. The Town Manager may, without the approval of the Town Council, settle claims against the Town for personal injuries or damages to property when the amount involved does not exceed the sum of

two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident or occasion complained of."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Cary and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

SECTION 3. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 868 of the 1971 Session Laws
Chapter 173 of the 1973 Session Laws
Chapter 357 of the 1973 Session Laws
Chapter 816 of the 1977 Session Laws
Chapter 51 of the 1985 Session Laws
Chapter 801 of the 1987 Session Laws
Chapter 511 of the 1989 Session Laws
Chapter 874 of the 1989 Session Laws
Section 3 of S.L. 2001-485.

SECTION 4. The following acts are not affected by this act:

Chapter 1275, Session Laws of 1979 (removal of areas from the corporate limits)
Chapter 279, Session Laws of 1989 (closing streets in ETJ)
Chapter 27, Session Laws of 1993 (removal of areas from the corporate limits and addition of areas to the corporate limits)
Chapter 137, Session Laws of 1993 (acquisition of street right-of-way outside the corporate limits)
Chapter 325, Session Laws of 1993 (motor vehicle tax)
S.L. 1998-192 (Swift Creek Management Plan)
S.L. 2000-108 (removal, replacement, and preservation of trees and shrubs)
S.L. 2001-191 (clear-cutting of trees in buffer zones, protection of specimen trees)
S.L. 2001-245 (expending funds on roads outside the corporate limits)
S.L. 2003-74 (acquisition of property for utilities)
S.L. 2001-286 (red-light cameras)
S.L. 2005-41 (reimbursement agreements).

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

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.
(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law on the date it was ratified.

H.B. 544 **Session Law 2005-118**

AN ACT TO AMEND THE MADISON COUNTY OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 102 of the 1997 Session Laws reads as rewritten:

"Section 1. ~~Occupancy tax. (a) Referendum. The Madison County Board of Commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether a room occupancy tax of up to three percent (3%) will be levied in accordance with this act. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.~~

~~The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this act shall be:~~

~~[ ] FOR [ ] AGAINST~~

~~Tax on rental of lodging at hotels, motels, and similar businesses, at a maximum rate of three percent (3%), to be used to promote travel and tourism and for tourism-related expenditures.~~

(b) Authorization and scope. ~~If a majority of those voting in a referendum held pursuant to this act vote for the levy of the tax, the Madison County Board of Commissioners may by resolution levy a room occupancy tax as provided in this act. In addition, if the county has not held a referendum, or if five years have passed since the~~

~~tax was defeated at a referendum, the~~The Madison County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax ~~as provided in this act. The tax authorized by this act may be levied at a rate~~ of up to three percent (3%) ~~and shall apply to~~of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or to a business that offers to rent fewer than five units.

(b1) In addition to the tax authorized by subsection (b) of this section, the Madison County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (b) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Madison County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (b) of this section.

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

(d) Distribution and use of tax revenue. Madison County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Madison County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Madison County and shall use the remainder for tourism-related expenditures. ~~The administrative expenses of the Authority may not exceed fifteen percent (15%) of the funds remitted to it under this subsection.~~

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed ~~five percent 5% of the gross proceeds.~~ three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

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

(3) Tourism-related expenditures. – Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, or a coliseum and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism."

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

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law on the date it was ratified.

H.B. 1005 **Session Law 2005-119**

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF PINEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Pineville are extended to include the entire territory located in the Town's Sphere of Influence on January 1, 2005, excepting and excluding that area bounded by the easterly margin of the right-of-way of Lancaster Highway on the east and McAlpine Creek on the north. As used in this act, "sphere of influence" means that area designated as such in annexation agreements between the Town of Pineville and other municipalities under Chapter 953 of the 1983 Session Laws, or under other general or local acts.

SECTION 2. The Town of Pineville shall record in the office of the Register of Deeds of Mecklenburg County a detailed map of the area annexed by this act.

SECTION 3. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law on the date it was ratified.

H.B. 1056 **Session Law 2005-120**

AN ACT TO AMEND THE DEADLINE FOR THE DEVELOPMENT OF A CONVENTION CENTER PLAN FOR CARTERET COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5 of S.L. 2001-381 reads as rewritten:

"**SECTION 5.** Additional occupancy tax. – In addition to the occupancy tax authorized by Section 2 of this act, the Board of Commissioners of Carteret County may levy an additional room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under Section 2 of this act if the following conditions have been met:

(1) A development plan for the construction of a convention center has been approved by resolution of the board of county commissioners and the governing board of the municipality where the center is to be located by June 30, ~~2006~~2008; and

(2) There is a signed contract between the appropriate local governments and a private developer that includes financing commitments for construction to begin no later than July 1, ~~2007.~~2009.

The tax authorized by this section may not become effective earlier than July 1, ~~2006.~~2008. The county may not levy a tax under this section unless it also levies the tax under Section 2 of this act. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Section 2 of this act.

If the conditions in subdivisions (1) and (2) of this section have been met and the one-cent (1¢) room occupancy tax described in this section is levied, the county's authority to levy the one-cent (1¢) tax is repealed on the first day of the second month

following the date that a cumulative total of ten million dollars ($10,000,000) in proceeds from this one-cent (1¢) tax has been collected. For purposes of this section, the cumulative total of ten million dollars ($10,000,000) is calculated beginning on July 1, ~~2006.~~2008.

Surplus proceeds from the one-cent (1¢) room occupancy tax described in this section beyond the ten million dollar ($10,000,000) cumulative total that are collected before the repeal date shall be redistributed to the Tourism Development Authority and used only to promote travel and tourism.

If the actual cost of the convention center is less than ten million dollars ($10,000,000), any proceeds from the one-cent (1¢) occupancy tax collected but not spent shall be redistributed to the Tourism Development Authority and used to promote travel and tourism.

If construction on the convention center has not begun by July 1, ~~2007,~~2009, the county's authority to levy the one-cent (1¢) room occupancy tax described in this section is repealed on September 1, ~~2007.~~2009. Any funds collected before the repeal date shall be redistributed to the Tourism Development Authority and used only to promote travel and tourism."

SECTION 2. Section 6(b) of S.L. 2001-381 reads as rewritten:

"**SECTION 6.(b)** If the conditions in subdivisions (1) and (2) of Section 5 of this act are met, and the additional occupancy tax authorized by Section 5 is levied, this section becomes effective the later of July 1, ~~2006,~~2008, or the effective date of the tax levied under Section 5 of this act. Otherwise, this section does not go into effect."

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

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law on the date it was ratified.

S.B. 472 **Session Law 2005-121**

AN ACT TO PROTECT CHILDREN FROM SEXUAL PREDATORS BY ALSO MAKING IT A FELONY CRIMINAL OFFENSE TO SOLICIT A PERSON THE PERPETRATOR BELIEVES TO BE A CHILD TO COMMIT UNLAWFUL SEX ACTS, TO REQUIRE PERSONS CONVICTED OF THIS OFFENSE TO REGISTER AS SEX OFFENDERS, AND TO AUTHORIZE THE STATE BUREAU OF INVESTIGATION TO INVESTIGATE CERTAIN CRIMES COMMITTED BY USE OF A COMPUTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.3 reads as rewritten:

"§ **14-202.3. Solicitation of child by computer to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is a Class ~~I felony.~~ H felony."

SECTION 2. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), ~~or~~ G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 3. G.S. 114-15 is amended by adding a new subsection to read:

"(b1) The State Bureau of Investigation is further authorized, upon request of the Governor or Attorney General, to investigate the solicitation, commission, or attempted commission, by means of a computer, computer network, computer system, electronic mail service provider, or the Internet, of the crimes defined in the following statutes:

(1) G.S. 14-190.6;
(2) G.S. 14-190.7;
(3) G.S. 14-190.8;
(4) G.S. 14-190.14;
(5) G.S. 14-190.15;
(6) G.S. 14-190.16;
(7) G.S. 14-190.17;
(8) G.S. 14-190.17A;
(9) G.S. 14-190.18;
(10) G.S. 14-190.19;
(11) G.S. 14-202.3;

Upon determining the location of the criminal violation, the State Bureau of Investigation shall promptly notify the sheriff and local law enforcement of its investigation."

SECTION 4. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 11:22 a.m. on the 29th day of June, 2005.

H.B. 27 **Session Law 2005-122**

AN ACT REQUIRING THE EMPLOYMENT SECURITY COMMISSION TO CONSIDER THE ORDINARY BUSINESS ACTIVITIES OF EMPLOYERS WHEN SCHEDULING HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-15(c) reads as rewritten:

"(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable regulations established by the Commission. ~~Such~~ The regulations need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Commission prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Commission by regulation shall provide. The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Commission unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such regulations as the Commission may adopt. No person may be appointed as an appeals referee unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Commission as a hearing officer under G.S. 96-4(m). No appeals referee in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals referee, the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Commission may dismiss the appeal."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:10 p.m. on the 29th day of June, 2005.

S.B. 734 **Session Law 2005-123**

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 45 OF THE GENERAL STATUTES RELATING TO THE SATISFACTION OF MORTGAGES AND

DEEDS OF TRUST AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 45 of the General Statutes reads as rewritten:

"Article 4.

"~~Discharge and Release.~~ Satisfaction.

"§ **45-36.2. ~~Register of deeds includes assistants and deputies.~~Obligation of good faith.**

~~The words "register of deeds" appearing in this Article shall be interpreted to mean "register of deeds, assistant register of deeds, or deputy register of deeds.~~Every action or duty within this Article imposes an obligation of good faith in its performance or enforcement.

"§ **45-36.3. Notification by mortgagee of satisfaction of provisions of deed of trust or mortgage, or other instrument; civil penalty.**

(a) After the satisfaction of the provisions of any deed of trust or mortgage, or other instrument intended to secure with real property the payment of money or the performance of any other obligation and registered as required by law, the holder of the evidence of the indebtedness, if it is a single instrument, or a duly authorized agent or attorney of such holder shall within 60 days:

(1) Discharge and release of record such documents and forward the cancelled documents to the grantor, trustor or mortgagor; or,

(2) Alternatively, the holder of the evidence of the indebtedness or a duly authorized agent or attorney of such holder, at the request of the grantor, trustor or mortgagor, shall forward said instrument and the deed of trust or mortgage instrument, with payment and satisfaction acknowledged in accordance with the requirements of G.S. 45-37, to the grantor, trustor or mortgagor.

(b) Any person, institution or agent who fails to comply with this section may be required to pay a civil penalty of not more than one thousand dollars ($1,000) in addition to reasonable attorneys' fees and any other damages awarded by the court to the grantor, trustor or mortgagor, or to a subsequent purchaser of the property from the grantor, trustor or mortgagor. A five hundred dollar ($500.00) civil penalty may be recovered by the grantor, trustor or mortgagor, and a five hundred dollar ($500.00) penalty may be recovered by the purchaser of the property from the grantor, trustor or mortgagor. If that purchaser of the property consists of more than a single grantee, then the civil penalty will be divided equally among all of the grantees. A petitioner may recover damages under this section only if he has given the mortgagee, obligee, beneficiary or other responsible party written notice of his intention to bring an action pursuant to this section. Upon receipt of this notice, the mortgagee, obligee, beneficiary or other responsible party shall have 30 days, in addition to the initial 60-day period, to fulfill the requirements of this section.

(c) Should any person, institution or agent who is not the present holder of the evidence of indebtedness be required to pay a civil penalty, attorneys' fees, or other damages under this section, they will have an action against the holder of the evidence of indebtedness for all sums they were required to pay.

(d) This section applies only if the provisions of the deed of trust, mortgage, or other instrument are satisfied before October 1, 2005.

"§ **45-36.4. Definitions.**

As used in this Article, the following terms mean:

(1) Address for giving a notification. – For the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate address, in which case the term means that address.

(2) Day. – Calendar day.

(3) Document. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) Entitled person. – A person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.

(6) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) Landowner. – A person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.

(8) Notification. – A document containing information required under this Article and signed by the person required to provide the information.

(9) Original parties. – With respect to a security instrument, each person named as a party to the security instrument on the face thereof as originally recorded. In identifying the original parties to a deed of trust for purposes of this Article, it is not necessary to include the original trustee or trustees named therein.

(10) Payoff amount. – The sum necessary to satisfy a secured obligation.

(11) Payoff statement. – A document containing the information specified in G.S. 45-36.7(d).

(12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) Recording data. – The book and page number or document number that indicates where a document is recorded in the office of the register of deeds.

(14) Register of deeds. – Includes the register of deeds, assistant register of deeds, or deputy register of deeds.

(15) Satisfy. – With respect to a security instrument, to terminate the effectiveness of the security instrument.

(16) Secured creditor. – A person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument.

(17) Secured obligation. – An obligation the payment or performance of which is secured by a security interest.

(18) Security instrument. – An agreement, however denominated, that creates or provides for an interest in real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property. The term includes a deed of trust and a mortgage.

(19) Security interest. – An interest in real property created by a security instrument.

(20) Sign. – With present intent to authenticate or adopt a document:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the document an electronic sound, symbol, or process.

(21) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(22) Submit for recording. – To deliver, with required fees and taxes, a document sufficient to be recorded under this Article to the register of deeds in the county in which the real property described in the related security instrument is located.

"**§ 45-36.5. Notification: manner of giving and effective date.**

(a) A person gives a notification by any of the following:

(1) Depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving a notification.

(2) Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner.

(3) Causing it to be received at the address for giving a notification within the time that it would have been received if given pursuant to subdivision (1) of this subsection.

(b) A notification is effective on any of the following:

(1) The day after it is deposited with a commercially reasonable delivery service for overnight delivery.

(2) Three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.

(3) The day it is given, if given pursuant to subdivision (a)(2) of this section.

(4) The day it is received, if given by a method other than as provided in subdivision (a)(1) or (a)(2) of this section.

(c) If this Article or a notification given pursuant to this Article requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this State or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

"**§ 45-36.6. Document of rescission: effect; liability for wrongful recording.**

(a) In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.

(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any other means, the person or the secured creditor may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the security instrument and reinstates the security instrument.

(c) A recorded document of rescission has no effect on the rights of a person that:

(1) Records an interest in the real property described in a security instrument after the recording of the satisfaction or affidavit of satisfaction of the security instrument or the erroneous satisfaction of record of the security instrument by other means and before the recording of the document of rescission; and

(2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.

(d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.

"**§ 45-36.7. Payoff statement: request and content.**

(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain all of the following:

(1) The entitled person's name.

(2) If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person.

(3) A direction whether the statement is to be sent to the entitled person or that person's authorized agent.

(4) The address to which the creditor must send the statement.

(5) Sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under subsection (a) of this section directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) A person who gives to a secured creditor a notification requesting a payoff statement thereby represents that the person is an entitled person or the authorized agent of an entitled person. A secured creditor may rely on that representation in providing a payoff statement unless the secured creditor knows that the requesting person is neither an entitled person nor the authorized agent of an entitled person. A secured creditor has no duty to make inquiry as to whether, or to verify that, the person requesting a payoff statement is an entitled person or the authorized agent of an entitled person.

(d) Within 10 days after the effective date of a notification that complies with subsection (a) of this section, the secured creditor shall issue a payoff statement and

send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the notification did not satisfy subsection (a) of this section. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall give (i) a notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee, or (ii) a notification to the person to whom the payoff statement otherwise would have been sent, stating that the recipient claims no interest in the security instrument or the secured obligation, that the secured obligation was assigned, but that the identity and address of the assignee is not known.

(e) A payoff statement must contain:

(1) The date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) The information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) The payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

(f) A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff statement.

(g) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day.

(h) A secured creditor must provide upon request one payoff statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars ($25.00) for each additional payoff statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount under subsection (f) of this section or a corrected payoff statement under G.S. 45-36.8(a).

(i) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) of this section does not send a timely payoff statement that substantially complies with subsection (d) of this section, the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorneys' fees and costs.

(k) This section does not apply unless the notification requesting a payoff statement is given on or after October 1, 2005.

"§ **45-36.8. Understated payoff statement: correction; effect.**

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement was understated, the creditor may send a corrected payoff statement. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

(c) This Article does not:

(1) Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount from any person liable for payment of the secured obligation; or

(2) Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this Article.

"§ **45-36.9. Secured creditor to submit satisfaction for recording; liability for failure.**

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

(b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is also liable to the landowner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, all of the following occur:

(1) The landowner gives the secured creditor a notification, by any method authorized by G.S. 45-36.5 that provides proof of receipt, demanding that the secured creditor submit a satisfaction for recording.

(2) The secured creditor does not submit a satisfaction for recording within 30 days after the secured creditor's receipt of the notification.

(3) The security instrument is not satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor's receipt of the notification.

The right to receive the additional one thousand dollars ($1,000) is personal to the landowner who gives the secured creditor notification under this subsection and may not be assigned.

(d) Subsection (c) of this section does not apply if the secured creditor received full payment or performance of the secured obligation before October 1, 2005.

(e) This section does not apply if the security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor receives full payment or performance of the secured obligation.

"**§ 45-36.10. Content and effect of satisfaction.**

(a) A document is a satisfaction of a security instrument if it does all of the following:

(1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) States that the person signing the satisfaction is the secured creditor.

(3) Reserved.

(4) Contains language terminating the effectiveness of the security instrument.

(5) Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

(b) The register of deeds shall accept for recording a satisfaction of a security instrument, unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, or (ii) the authority of the person executing any satisfaction document to do so.

(c) The recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

"**§ 45-36.11. Satisfaction: form.**

No particular phrasing is required for a satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.10(a):

"SATISFACTION OF SECURITY INSTRUMENT

(G.S. 45-36.10; G.S. 45-37(a)(7))

The undersigned is now the secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument.

Date:_____ _____

(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]".

"§ **45-36.12. Limitation of secured creditor's liability.**

A secured creditor is not liable under this Article if it:

(1) Established a reasonable procedure to achieve compliance with its obligations under this Article;

(2) Complied with that procedure in good faith; and

(3) Was unable to comply with its obligations because of circumstances beyond its control.

"§ **45-36.13. Eligibility to serve as satisfaction agent.**

No person other than an attorney licensed to practice law in the State of North Carolina may serve as a satisfaction agent under this Article.

"§ **45-36.14. Affidavit of satisfaction: notification to secured creditor.**

(a) If a secured creditor has not submitted for recording a satisfaction of a security instrument and the security instrument has not been satisfied of record by any of the methods provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must include all of the following:

(1) The identity and mailing address of the satisfaction agent.

(2) Identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument.

(3) A statement that the satisfaction agent has reasonable grounds to believe that:

a. The person to whom the notification is being given is the secured creditor; and

b. The secured creditor has received full payment or performance of the secured obligation.

(4) A statement that the security instrument has not been satisfied of record.

(5) A statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the security instrument, intends to sign and submit for recording an affidavit of satisfaction of the security instrument unless, within 30 days after the effective date of the notification:

a. The secured creditor submits a satisfaction of the security instrument for recording;

b. The satisfaction agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied;

c. The satisfaction agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; or

d. The security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a).

(b) A notification under subsection (a) of this section must be sent by a method authorized by G.S. 45-36.5 that provides proof of receipt to the secured creditor's address for giving a notification for the purpose of requesting a payoff statement or, if the satisfaction agent cannot ascertain that address, to the secured creditor's address for notification for any other purpose.

(c) This Article does not require a person to agree to serve as a satisfaction agent.

"§ **45-36.15. Affidavit of satisfaction: authorization to submit for recording.**

(a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with G.S. 45-36.16 if:

(1) The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument or otherwise caused the security instrument to be satisfied of record pursuant to any of the methods provided in G.S. 45-37(a) within 30 days after the effective date of a notification complying with G.S. 45-36.14(a); or

(2) The secured creditor authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a security instrument if it has received a notification under G.S. 45-36.14(a)(5)b. stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under G.S. 45-36.14(a)(5)c. stating that the security instrument has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the security instrument without:

(1) Giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) Complying with G.S. 45-36.14 with respect to the identified assignee.

"§ **45-36.16. Affidavit of satisfaction: content.**

An affidavit of satisfaction of a security instrument must comply with all of the following:

(1) Identify the type of security instrument, the original parties to the security instrument, the secured creditor, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) State the basis upon which the person signing the affidavit is a satisfaction agent.

(3) Reserved.

(4) State that the person signing the affidavit has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation.

(5) State that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its intention to sign and submit for recording an affidavit of satisfaction.

(6) Describe the method by which the person signing the affidavit gave notification in compliance with this Article.

(7) State that:

a. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction

for recording and has not received a notification that the secured obligation remains unsatisfied; or

b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.

(8) Be signed and acknowledged as required by law for a conveyance of an interest in real property.

"**§ 45-36.17. Affidavit of satisfaction: form.**

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:

"AFFIDAVIT OF SATISFACTION

_____

(Date of Affidavit)

The undersigned hereby states as follows:

1. I am an attorney licensed to practice law in the State of North Carolina.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument") currently held by _____ (the "secured creditor"):

Type of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. With the authorization of the owner of the real property described in the security instrument, I gave notification to the secured creditor by method authorized by G.S. 45-36.5 that provides proof of receipt that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [Check appropriate box]

[ ] The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

[ ] The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this Affidavit of Satisfaction.

_____

(Signature of Satisfaction Agent)

[Acknowledgment before officer authorized to take acknowledgments]"

"§ **45-36.18. Affidavit of satisfaction: effect.**

(a) Upon recording, an affidavit substantially complying with the requirements of G.S. 45-36.16 constitutes a satisfaction of the security instrument described in the affidavit.

(b) The recording of an affidavit of satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

(1) The affidavit is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The affidavit is not signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of satisfaction, or (ii) the authority of the person executing any affidavit of satisfaction to do so.

"§ **45-36.19. Liability of satisfaction agent.**

(a) Except as otherwise provided in subsection (b) of this section, a satisfaction agent or any person purporting to be a satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously or with knowledge that the statements contained in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording and reasonable attorneys' fees and costs.

(b) A satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this Article and the secured creditor did not respond in a timely manner to the notification pursuant to G.S. 45-36.14(a)(5).

(c) If a satisfaction agent or any person purporting to be a satisfaction agent records or submits for recording an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, this section does not preclude any of the following:

(1) A court from awarding punitive damages on account of the conduct.

(2) The secured creditor from proceeding against the satisfaction agent or person purporting to be a satisfaction agent under law of this State other than this Article.

(3) The enforcement of any criminal statute prohibiting the conduct.

"§ **45-36.20. Trustee's satisfaction of deed of trust: content and effect.**

(a) Upon recording, a trustee's satisfaction substantially complying with the requirements of this section constitutes a satisfaction of the deed of trust described in the trustee's satisfaction.

(b) The recording of a trustee's satisfaction does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) This section applies only if the security instrument is a deed of trust. This section is not exclusive. Deeds of trust may also be satisfied of record by methods other than the filing of a trustee's satisfaction.

(d) Document is a trustee's satisfaction of a deed of trust if it complies with all of the following:

(1) Identifies the original parties to the deed of trust, the recording data for the deed of trust, and the office in which the deed of trust is recorded.

(2) States that the person signing the trustee's satisfaction is then serving as trustee or substitute trustee under the terms of the deed of trust.

(3) Contains language terminating the effectiveness of the deed of trust.

(4) Is signed by the trustee or substitute trustee then serving under the terms of the deed of trust and acknowledged as required by law for a conveyance of an interest in real property.

(e) The register of deeds shall accept for recording a trustee's satisfaction of a deed of trust, unless:

(1) The trustee's satisfaction is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The trustee's satisfaction is not signed by the trustee or substitute trustee and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any trustee's satisfaction, or (ii) the authority of the person executing any trustee's satisfaction to do so.

"§ **45-36.21. Trustee's satisfaction of deed of trust: form.**

No particular phrasing is required for a trustee's satisfaction of a deed of trust. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.20:

"TRUSTEE'S SATISFACTION OF DEED OF TRUST
(G.S. 45-36.20; G.S. 45-37(a)(7))

The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

Recording Data: The deed of trust is recorded in Book _____ at Page _____ or as document number _____in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the deed of trust.

Date:_____ _____
(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]"

"§ **45-37. ~~Discharge of record of mortgages, deeds of trust and other instruments.~~Satisfaction of record of security instruments.**

(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to ~~secured~~ security instruments which secure future advances, ~~any deed of trust or mortgage or other~~ any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

(1) ~~By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by:~~

~~a. The trustee,~~

~~b. The mortgagee,~~

~~c. The legal representative of a trustee or mortgagee, or~~

~~d. A duly authorized agent or attorney of any of the above.~~

~~The register of deeds is not required to verify or make inquiry concerning the authority of the person acknowledging the satisfaction to do so. Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgment of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall also affix his name thereto.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(2) By ~~exhibition of any deed of trust, mortgage or other~~ presentation of any original security instrument accompanied with the original bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing thereon and made by:

a. The ~~obligee,~~secured creditor,

b. The ~~mortgagee,~~trustee or substitute trustee, if the security instrument is a deed of trust,

~~c. The trustee,~~

~~d.~~c. An assignee of the ~~obligee, mortgagee, or trustee, or~~secured creditor, or

~~e.~~d. ~~Any chartered banking institution, or~~ Any bank, savings and loan association, ~~national or state, or credit union, qualified to do business in and having an office~~ savings bank, or credit union chartered under the laws of this or any other state or the United States having an office or branch in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof.

The register of deeds is not required to verify or make inquiry concerning the authority of the person making the endorsement of payment and satisfaction to do so. ~~Upon exhibition of the~~

~~instruments,~~Only upon presentation of the original instruments with endorsement of payment and satisfaction appearing thereon shall the register of deeds ~~shall cancel the mortgage, deed of trust or other instrument by recording~~ record a record of satisfaction as described in ~~G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record.~~ G.S. 45-37.2(b). The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments ~~exhibited.~~presented. ~~The exhibition of the mortgage, deed of trust or other~~The presentation of the security instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the ~~mortgage, deed of trust or other~~ security instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it.

(3) By ~~exhibiting~~ presentation to the register of deeds by:

a. The grantor,
b. The mortgagor, or
c. An agent, attorney or successor in title of the grantor or mortgagor

of any ~~mortgage, deed of trust or other~~ original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note or other instrument secured thereby, or by ~~exhibition of the mortgage, deed of trust or other~~ presentation of the original security instrument alone if such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of ~~exhibition,~~presentation, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so ~~exhibited~~ presented have an endorsement of partial payment, satisfaction, performance or discharge within the said period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

~~The register of deeds shall cancel the mortgage, deed of trust, or other instrument by recording~~ Only upon presentation of the original instruments shall the register of deeds record a record of satisfaction as described in ~~G.S. 45-37.2, and may make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.~~G.S. 45-37.2(b).

(4) By ~~exhibition~~ presentation to the register of deeds of any ~~deed of trust~~ original security instrument given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

~~Upon exhibition of the deed of trust,~~ Only upon presentation of the original security instruments, and the originals of evidences of indebtedness properly ~~marked,~~marked shall the register of deeds ~~shall~~

~~cancel such deed of trust by recording~~ record a record of satisfaction as described in ~~G.S. 45-37.2, and may make an entry of satisfaction upon the margin of the record, which record, or entry if made,~~ G.S. 45-37.2(b), which record of satisfaction shall be valid and binding upon all persons, if no person rightfully entitled to the ~~deed of trust~~ security instrument or evidences of indebtedness has previously notified the register of deeds ~~in writing~~by means of a written affidavit of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the ~~notice or~~affidavit of loss or theft ~~in~~ as a separate document, as required by G.S. 161-14.1.

Upon receipt of ~~written notice~~an affidavit of loss or theft of the ~~deed of trust~~ security instrument or evidences of indebtedness that identify the security instrument, the original parties to the security instrument, and the recording data for the security instrument, the register of deeds shall record a record of satisfaction, as described in ~~G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the deed of trust containing the marginal entry and may make on the record of the deed of trust concerned a marginal entry in writing thereof, with the date of receipt of the notice.~~G.S. 45-37.2(b). The ~~deed of trust~~ security instrument shall not be ~~canceled~~ presented for satisfaction after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

~~Every entry of acknowledgment of satisfaction or of satisfaction made or witnessed by the register of deeds as provided in subdivision (a)(1) shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage as if a deed of release or reconveyance thereof had been duly executed and recorded.~~

(5) ~~By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The notice of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the notice.~~

~~Upon exhibition of the notice of satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any~~

~~acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the notice of satisfaction to do so.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(6) ~~By exhibition to the register of deeds of a certificate of satisfaction of a deed of trust, mortgage, or other instrument that has been acknowledged before an officer authorized to take acknowledgments by the owner of the note, bond, or other evidence of indebtedness secured by the deed of trust or mortgage. The certificate of satisfaction shall be accompanied by the note, bond, or other evidence of indebtedness, if available, with an endorsement of payment and satisfaction by the owner of the note, bond, or other evidence of indebtedness. If such evidence of indebtedness cannot be produced, an affidavit, hereafter referred to as an "affidavit of lost note", signed by the owner of the note, bond, or other evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3. The certificate of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the certificate.~~

~~Upon exhibition of the certificate of satisfaction and accompanying evidence of indebtedness endorsed paid and satisfied, or upon exhibition of an affidavit of lost note, the register of deeds shall record the certificate of satisfaction and either the accompanying evidence of indebtedness or the affidavit of lost note, and shall cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the certificate of satisfaction to do so.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(7) By recording:

a. A satisfaction document that satisfies the requirements of G.S. 45-36.10,

b. An affidavit of satisfaction that satisfies the requirements of G.S. 45-36.16, or

c. A trustee's satisfaction that satisfies the requirements of G.S. 45-36.20, but only if the security instrument is a deed of trust.

The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the person executing any satisfaction document, affidavit, or trustee's satisfaction to do so.

(b) It shall be conclusively presumed that the conditions of any ~~deed of trust, mortgage or other~~ security instrument securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

(1) The date when the conditions of ~~such~~ the security instrument were required by its terms to have been performed, or

(2) The date of maturity of the last installment of debt or interest secured thereby;

provided that the holder of the indebtedness secured by ~~such~~ the security instrument or party secured by any provision thereof may file an affidavit with the register of deeds which affidavit shall specifically state:

(1) The amount of debt unpaid, which is secured by ~~said~~ the security instrument; or

(2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument signed by the ~~holder or party~~ secured creditor and witnessed by the register of deeds stating:

(1) Any payments that have been made on the indebtedness or other obligation secured by ~~such~~ the security instrument including the date and amount of payments and

(2) The amount still due or obligations not performed under the security instrument.

~~Whenever practical, the register of deeds may also enter the information contained in the separate instrument on the margin of the record of the instrument.~~ The effect of the filing of the affidavit or ~~of the instrument recorded~~the recording of a separate instrument made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the ~~instrument or the making of the notation.~~separate instrument. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record and index the affidavit provided for herein ~~and shall record a~~or the separate ~~instrument, as required by G.S. 161-14.1, making reference to the filing of such affidavit and to the book and page where the affidavit is recorded. Whenever practical, the register of deeds may also make such a reference on the margin of the record of the deed of trust, mortgage, or other instrument referred to.~~instrument made as herein provided as a subsequent instrument in accordance with G.S. 161-14.1. This subsection shall not apply to any ~~deed, mortgage, deed of trust or other~~ security instrument made or given by any railroad company, or to

any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

(c) Repealed by Session Laws 1991, c. 114, s. 4.

~~(d) For the purposes of this section "register of deeds" means the register of deeds, his deputies or assistants of the county in which the mortgage, deed of trust, or other instrument intended to secure the payment of money or performance of other obligation is registered.~~

(e) Any transaction subject to the provisions of the Uniform Commercial Code, Chapter 25 of the General Statutes, is controlled by the provisions of that act and not by this section.

(f) Whenever this section requires a signature or endorsement, that signature or endorsement shall be followed by the name of the person signing or endorsing the document printed, stamped, or typed so as to be clearly legible. ~~The register of deeds may refuse to accept any document when the provisions of this subsection have not been met.~~

(g) The satisfaction of record of a security instrument pursuant to this section shall operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property described in the security instrument and shall release and discharge (i) all the interest of the secured creditor in the real property arising from the security instrument and, (ii) if the security instrument is a deed of trust, all the interest of the trustee or substitute trustee in the real property arising from the deed of trust.

"§ **45-37.1. Validation of certain entries of cancellation made by beneficiary or assignee instead of trustee.**

In all cases where, prior to January 1, 1930, it appears from the margin or face of the record in the office of the register of deeds of any county in this State that the original beneficiary named in any deed of trust, trust indenture, or other instrument intended to secure the payment of money and constituting a lien on real estate, or his assignee of record, shall have made an entry purporting to fully satisfy and discharge the lien of such instrument, and such entry has been signed by the original payee and beneficiary in said deed of trust, or other security instrument, or by his assignee of record, or by his or their properly constituted officer, agent, attorney, or legal representatives, and has been duly witnessed by the register of deeds or his deputy, all such entries of cancellation and satisfaction are hereby validated and made full, sufficient and complete to release, satisfy and discharge the lien of such instrument, and shall have the same effect as if such entry had been made and signed by the trustee named in said deed of trust, or other security instrument, or by his duly appointed successor or substitute.

"§ **45-37.2. Recording satisfactions of ~~deeds of trust and mortgages.~~security instruments.**

(a) When a ~~notice of~~ satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to ~~G.S. 45-37(a)(5) or a certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6),~~ G.S. 45-37(a)(7), the register of deeds shall ~~make an entry of satisfaction on the notice or certificate and~~ record and index the ~~instrument.~~instrument in accordance with G.S. 161-14.1. No fee shall be charged by the register of deeds for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

(b) When a ~~deed of trust, mortgage, or other~~ security instrument is satisfied of record by a method other than by means of ~~a notice of satisfaction or certificate of~~

~~satisfaction,~~ recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with G.S. 161.14.1 a record of satisfaction ~~consisting of either a separate instrument or all or a portion of the original deed of trust or mortgage rerecorded, and shall make the appropriate entry of satisfaction as provided in G.S. 45-37 on each~~ as provided for in this subsection. ~~record of satisfaction. A separate instrument or original deed of trust or mortgage rerecorded pursuant to this subsection shall contain (i) names of all parties to the original instrument, (ii) the amount of the obligation secured, (iii) the date of satisfaction of the obligation, (iv) a reference by book and page number to the record of the instrument satisfied, and (v) the date of recording the notice of satisfaction.~~If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of the original security instrument rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection. In all other cases, the record of satisfaction shall consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording a record of satisfaction.

(1) If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), all or a portion of the security instrument rerecorded is a sufficient record of satisfaction if it identifies the security instrument, the original parties to the security instrument, and the recording data for the security instrument as originally recorded. In addition, the rerecorded security instrument must contain either (i) an endorsement of payment and satisfaction made by a person authorized under G.S. 45-37(a)(2) to make such an endorsement, or (ii) an endorsement signed by the register of deeds that states substantially the following: "This security instrument is satisfied of record pursuant to G.S. 45-37(a)(2), the original security instrument and secured obligations having been presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law."

(2) A separate instrument is a sufficient record of satisfaction if it complies with all of the following:

a. Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

b. States the statutory authority pursuant to which the security instrument is being satisfied of record.

c. Contains language terminating the effectiveness of the security instrument.

d. Is signed by the register of deeds.

No particular phrasing is required for a record of satisfaction. The following form, when properly completed, is sufficient to satisfy the requirements of this subdivision:

"RECORD OF SATISFACTION
(G.S. 45-37.2)

This Record of Satisfaction applies to the following security instrument:

Type of Security Instrument: (Identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This Record of Satisfaction terminates the effectiveness of the security instrument pursuant to the following statutory authority: (check applicable box)

[ ] G.S. 45-37(a)(2), the original security instrument and secured obligations having been presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law.

[ ] G.S. 45-37(a)(3), the original security instrument and secured obligations having been presented to me, each such instrument being more than 10 years old as provided by law.

[ ] G.S. 45-37(a)(4), the original security instrument and all negotiable instruments transferable by delivery secured thereby having been presented to me, each having been marked paid and satisfied in full by the bearer or holder thereof.

Other: (specify)

Date: _____ _____

(Signature of register of deeds)".

~~(c) Whenever it is practical to do so, the register of deeds may make a marginal notation of satisfaction in addition to making the recordation required by this section.~~

"§ **45-38. Recording of foreclosure.**

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure ~~and, whenever it is practical to do so, may also enter upon the margin of the record of the deed of trust or mortgage of the fact that such foreclosure and~~that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was ~~sold and which was not sold, and may make an additional notation indicating the same, whenever practical.~~sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of ~~all~~ the original parties to the original ~~instrument,~~instrument foreclosed, ~~the amount of the obligation secured, a reference by book and page number to the record of~~ and the recording data for the instrument ~~foreclosed, and the date of recording the notice of foreclosure.~~foreclosed. A notice of forfeiture shall be indexed by the register of deeds in accordance with G.S. 161.14.1.

"§ **45-39: Repealed by Session Laws 1949, c. 720, s. 5.**

"~~§ 45-40. Register to enter satisfaction on index.~~

~~When satisfaction of the provisions of any deed of trust or mortgage is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said deed of trust or mortgage, or when the register of deeds or his deputy shall cancel the mortgage or other instrument by entry of satisfaction, then the register of deeds or his deputy shall enter upon the alphabetical grantor index kept by him, as required by law, and opposite the names of the grantor and grantee and on a line with the names of said grantor and grantee, the words "satisfied mortgage," if the instrument of which satisfaction has been acknowledged or entered is a mortgage, and the words "satisfied deed of trust," if the instrument of which satisfaction has been acknowledged or entered is a deed of trust, or, in lieu of the entries herein provided, the register of deeds or his deputy may denote satisfaction in the grantor index by using a capital "C" or the word "Cancelled," or the word "Satisfied." This statute shall not apply to counties using computerized indexing or to counties in which a parcel identifier index is established pursuant to G.S. 161-22.2.~~

"§ **45-41. Recorded deed of release of mortgagee's representative.**

The personal representative of any mortgagee or trustee in any mortgage or deed of trust which has heretofore or which may hereafter be registered in the manner required by the laws of this State may satisfy of record, discharge and release the same and all property thereby conveyed by deed of quitclaim, release or conveyance executed, acknowledged and recorded as is now prescribed by law for the execution, acknowledgment and registration of deeds and mortgages in this State.

"§ **45-42. Satisfaction of corporate mortgages by corporate officers.**

All ~~mortgages and deeds in trust~~ security instruments executed to a corporation may be satisfied and so marked of record as by law provided for the satisfaction of ~~mortgages and deeds in trust,~~ security instruments, by any officer of the corporation indicating the office held. For the purposes of recordation and ~~cancellation,~~ satisfaction, such signature shall be deemed to be a certification by the signer that he is an officer and is authorized to execute the satisfaction on behalf of such corporation. Where ~~mortgages or deeds in trust~~ security instruments were marked "satisfied" on the records before the twenty-third day of February, 1909, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded.

"§ **45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

Upon affidavit of the secretary and treasurer of a corporation showing that the records of such corporation show that such corporation has fully paid and satisfied all of the notes secured by a ~~mortgage or deed of trust~~ security instrument executed by such corporation and such payment and satisfaction was made more than 25 years ago, and that such ~~mortgage or deed of trust~~ security instrument was made to a corporation which

ceased to exist more than 25 years ago, and such affidavit shall further state that the records of such corporation show that no payments have been made on such ~~mortgage~~ secured obligation by the corporation executing such ~~mortgage or deed of trust~~ security instrument for 25 years, the register of deeds of the county in which such ~~mortgage or deed of trust~~ security instrument is recorded is authorized ~~and empowered to file such affidavit and record the same in his office and to record a separate instrument making reference to the filing of such affidavit and to the book and page where the affidavit is recorded.~~to record the affidavit. ~~The register of deeds may also make reference thereto on the margin of the record in which the said mortgage or deed of trust is recorded, and, upon recording such instrument or making such entry, the said mortgage or deed of trust shall be deemed to be cancelled and satisfied and the said register of deeds is hereby authorized to cancel the same of record:~~The register of deeds shall index the affidavit according to G.S. 161-22 using the names of parties stated in the affidavit and shall make reference to the recording data of the original security instrument as stated in the affidavit opposite the name of each party so indexed. Upon recording such affidavit, the said security instrument shall be deemed to be cancelled and satisfied of record: Provided, that this section shall not apply to any mortgagor corporation except those in which the State of North Carolina owns more than a majority of the capital stock and shall not apply to any ~~mortgage or deed of trust~~ security instrument in which the principal amount secured thereby exceeds the sum of fifteen thousand dollars ($15,000): Provided, such cancellation shall not bar any action to foreclose such ~~mortgage or deed of trust~~ security instrument instituted within 90 days after the same is cancelled."

SECTION 2. G.S. 47-14 reads as rewritten:

"§ **47-14. Register of deeds to ~~pass on certificate~~ verify the presence of proof or acknowledgement and register instruments; order by judge; instruments to which register of deeds is a party.**

(a) ~~When the proof or acknowledgment of the execution of any instrument, required or permitted by law to be registered, is had before any other official than the register of deeds of the county in which the instrument is offered for registration, the register of deeds shall examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it appears on the face of the instrument that the execution thereof by one or more of the signers has been duly proved or acknowledged and the certificate or certificates to that effect are in due form, he shall so certify, and shall register the instrument, together with the certificates. No certification is required when the proof or acknowledgment is before the register of deeds of the county in which the instrument is offered for registration.~~ The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the said proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it is being rerecorded pursuant to G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority of any officer who took a proof or acknowledgement, or (iii) the legal sufficiency of any document presented for registration.

(b) If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may present the instrument to a judge, as provided in subsection (c), and ~~he shall examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it appears on the face of the instrument that the execution thereof by one or more of the signers has been duly proved or acknowledged and the certificates to that effect are in due form, he~~the judge shall determine that if the instrument requires proof or acknowledgement and if the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and acknowledgements, and if said proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if required, the judge shall so adjudge, and shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly.

(c) ~~When a district court has been established in the district including the county in which the instrument is to be registered, application~~Application for an order for registration pursuant to subsection (b) of this section shall be made to any judge of the district court in the district including the county in which the instrument is to be registered. ~~Until a district court has been established, application for an order for registration pursuant to subsection (b) may be made to a resident judge of superior court residing in the district including the county in which the instrument is to be registered, a judge regularly holding the superior courts of the district including the county in which the instrument is to be registered, any judge holding a session of superior court, either civil or criminal, in the district including the county in which the instrument is to be registered, or a special judge of superior court residing in the district including the county in which the instrument is to be registered.~~

…."

SECTION 3. G.S. 47-37 is repealed.

SECTION 4. G.S. 47-46 is repealed.

SECTION 5. G.S. 47-46.1 reads as rewritten:

"§ **47-46.1. Notice of satisfaction of deed of trust, mortgage, or other instrument.**

No particular phrasing is required for a notice of satisfaction pursuant to G.S. 45-37(a)(5) as it was prior to October 1, 2005, a satisfaction of a security instrument under G.S. 45-36.10, or a trustee's satisfaction under G.S. 45-36.20. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a notice of satisfaction under G.S. 45-37(a)(5) as it was in effect prior to October 1, 2005, (ii) for a satisfaction under G.S. 45-36.10 if the form is signed and acknowledged by the secured creditor, and (iii) for a trustee's satisfaction under G.S. 45-36.20 if the security instrument is a deed of trust and the form is signed and acknowledged by the trustee:

~~The form of a notice of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(5) shall be substantially as follows:~~

North Carolina, _____ County.

I, _____ (name of trustee or mortgagee), certify that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by _____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction).

_____

(Signature of trustee or mortgagee)

~~I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of trustee or mortgagee) personally came before me this day and acknowledged the satisfaction of the provisions of the above-referenced (deed of trust) (mortgage) (other instrument).~~

~~Witness my hand and official seal this the _____ day of _____ (month), _____ (year).~~

_____

~~(Signature of officer taking acknowledgment)~~

(Acknowledgment before officer authorized to take acknowledgments)

My commission expires _____ (Date of expiration of official's commission).

~~North Carolina, _____ County.~~

~~The foregoing acknowledgment of _____ (name of officer that took acknowledgment), _____ (official title of person that took acknowledgment), is certified to be correct.~~

~~This _____ (day) of _____ (month), _____ (year).~~

_____

~~(Signature of Register of Deeds).~~

"§ **47-46.2. Certificate of satisfaction of deed of trust, mortgage, or other instrument.**

No particular phrasing is required for a certification of satisfaction pursuant to G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, or for a satisfaction of a security instrument under G.S. 45-36.10. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a certificate of satisfaction under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, and (ii) for a satisfaction of a security instrument under G.S. 45-36.10 when signed and acknowledged by the secured creditor:

~~The form of a certificate of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(6) shall be substantially as follows:~~

CERTIFICATE OF SATISFACTION

North Carolina, _____ County.

I, _____ (name of owner of the note or other indebtedness secured by the deed of trust or mortgage), certify that I am the owner of the indebtedness secured by the hereafter described deed of trust or mortgage and that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by _____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction). I request that this certificate of satisfaction be recorded and the above-referenced security instrument be canceled of record.

_____
(Signature of owner of note)

[Acknowledgment before officer authorized to take acknowledgments]."

SECTION 6. G.S. 47-46.3 reads as rewritten:

"§ **47-46.3. Affidavit of lost note.**

No particular phrasing is required for an affidavit of lost note pursuant to G.S. 45-36(a)(6) as it was in effect prior to October 1, 2005. The following form, when properly completed, is sufficient to satisfy the requirements for an affidavit of lost note under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005.

~~The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:~~

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in _____ County, State of _____, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and
2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument was satisfied on _____, _____ (date of satisfaction), and the affiant is responsible for cancellation of the same.

_____
(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, _____.

[Signature and seal of notary public or other official authorized to administer oaths]."

SECTION 7. G.S. 161-10(a)(16) reads as rewritten:

"(16) Probate. – For ~~certification of instruments for registration~~ verification of proofs and acknowledgements as provided in G.S. 47-14 two dollars ($2.00)."

SECTION 8. G.S. 161-14.1 reads as rewritten:

"§ **161-14.1. Recording subsequent entries as separate instruments.**

~~In all cases in which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of a deed of trust, mortgage, or other instrument, the register of deeds shall, except as provided in G.S. 45-37.2 and 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. In the recording of satisfactions or foreclosures of deeds of trust and mortgages, the register of deeds shall comply with the provisions of~~

~~G.S. 45-37.2 and 45-38. Whenever it is practical to do so, the register of deeds may continue making marginal notations in addition to making the recordation required by this section.~~

(a) As used in this section, the following terms mean:

(1) Original instrument. – The previously recorded instrument that is modified, amended, supplemented, assigned, satisfied, terminated, revoked, or cancelled by a subsequent instrument.

(2) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.

(3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the appointment or designation of a substitute trustee in a deed of trust; an affidavit extending the life of a deed of trust; the cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered pursuant to G.S. 45-38; an assignment of a security instrument or lease; a modification agreement; a release or partial release of property from the lien of a security instrument; an assumption agreement; a subordination agreement; an instrument terminating future optional advances registered pursuant to G.S. 45-72; the revocation of a power of attorney; any instrument authorized or directed by law to be indexed under the provisions of this section; and any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.

(b) The register of deeds shall register each subsequent instrument as a separate instrument and do all of the following:

(1) Index the parties to the subsequent instrument.

(2) If the subsequent instrument names one or more of the original parties to the original instrument, index the original parties to the original instrument as they are named in the subsequent instrument.

(3) If the subsequent instrument states the recording data for the original instrument, reference the recording data of the original instrument as that recording data is stated in the subsequent instrument to each name so indexed.

(c) The register of deeds shall not be required to (i) read or examine any page of an instrument, other than the first two pages, to determine whether it is a subsequent instrument within the meaning of this section, or (ii) verify or make inquiry concerning the accuracy, sufficiency, or completeness of information about an original instrument contained in any subsequent instrument. The register of deeds is expressly authorized to rely solely on the information contained in the subsequent instrument, including, but not limited to, the names of the original parties to the original instrument and the recording data for the original instrument."

SECTION 9. G.S. 161-22(d) reads as rewritten:

"(d) Deeds of trust may be indexed in the names of the grantor and ~~trustee~~ beneficiary only."

SECTION 10. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 1:11 p.m. on the 29th day of June, 2005.

S.B. 685 **Session Law 2005-124**

AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, ESTABLISHING THE REQUIREMENTS FOR DE MINIMIS REGISTRATION, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JULY 1, 2005, PROVIDING FOR CONDITIONAL AUTHORITY FOR A PROFESSIONAL EMPLOYER ORGANIZATION TO OPERATE PENDING CONSIDERATION OF ITS LICENSE APPLICATION UPON A SHOWING OF FINANCIAL STABILITY AND NEED, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50 reads as rewritten:

"§ **58-89A-50. Surety bond; letter of credit.**

(a) An applicant for licensure shall file with the Commissioner a surety bond in the amount of one hundred thousand dollars ($100,000) in favor of the State of North Carolina.

(b) The surety bond required by this section shall be in a form acceptable to the Commissioner, issued by an insurer authorized by the Commissioner to write surety business in this State, and maintained in force while the license remains in effect or any obligations or liabilities of the applicant, licensee or PEO previously licensed by this State remain outstanding.

(c) The surety bond required by this section may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond~~that~~ meets the requirements of this ~~section if~~ section, and (iii) 90 days' advance written notice is provided to the Commissioner.

(d) A licensee shall not require a client company to contribute in any manner to the payment of the surety bond required by this section.

(e) Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the Commissioner in writing at least 45 days before cancellation or nonrenewal.

(e1) A surety bond may be cancelled by the issuer of the bond with respect to future obligations or liabilities upon proper notice pursuant to this section and without regard to approval or acceptance of the Commissioner.

(f) In lieu of the surety bond required by this section, an applicant may submit to the Commissioner an irrevocable letter of credit in a form acceptable to the Commissioner issued by a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or may maintain on deposit with the Commissioner an amount equal to the amount required under subsection (a) of this section in cash or in value of securities of the kind specified in ~~G.S. 58-5-20 and subject to the same conditions as the surety bond.~~ G.S. 58-5-20.

(g) This section does not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in ~~G.S. 58-89A-76.~~ G.S. 58-89A-76 or to persons who are de minimis registrants pursuant to G.S. 58-89A-75.

(h) The license of any licensee that fails to provide and maintain a surety bond, letter of credit, cash, or securities pursuant to this section shall be automatically and immediately suspended, and the licensee shall tender its license to the Commissioner within three days of failure to satisfy this requirement."

SECTION 2. G.S. 58-89A-65 reads as rewritten:

"§ **58-89A-65. Fees.**

(a) Each applicant for a professional employer organization license or ~~limited professional employer organization license~~ de minimis registration shall pay to the Commissioner, before the issuance of the license, a nonrefundable application fee of one thousand dollars ($1,000).

(b) Each licensee shall pay to the Commissioner when filing the information required under G.S. 58-89A-70(d) an annual filing fee of one thousand dollars ($1,000).

(c) Each applicant for alternative licensing under G.S. 58-89A-76 and each applicant for renewal of a license provided under G.S. 58-89A-76 shall pay to the Commissioner, before issuance or renewal of the license, a fee of five hundred dollars ($500.00).

(d) When the Commissioner finds that a licensee has committed an act that is a ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes final following the conclusion of all administrative or judicial proceedings, the Commissioner may charge an applicant or licensee reasonable fees to recover the Department's costs associated with investigations, inspections, examinations, and any other administrative or enforcement responsibilities created under this Article.

(e) Fees collected by the Commissioner under this Article shall be deposited in the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this Article."

SECTION 3. G.S. 58-89A-75 reads as rewritten:

"§ **58-89A-75. ~~Limited license.~~ De minimis registration.**

~~The Commissioner, by rule, shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this State.~~ A person who seeks to offer limited professional employer services in this State shall be eligible for de minimis registration status upon compliance with this section and may operate as a de minimis registrant in this State upon notification pursuant to this section. A person

shall satisfy the requirements for a de minimis registration only if the professional employer organization:

(1) Does not maintain a physical professional employer organization office located in this State;

(2) Does not employ salespersons who reside or direct their sales activities in this State;

(3) Does not employ directly or in common control with another person, as defined in G.S. 58-89A-5(12), more than 50 assigned employees in this State;

(4) Does not advertise through any media outlet physically located in this State;

(5) Is a licensed or registered professional employer organization in at least one other state of the United States; and

(6) Is operated by and under the control of persons of good moral character.

A professional employer organization operating under a de minimis registration shall be subject to all of the responsibilities and authority of a licensee under this Article except for G.S. 58-89A-50, 58-89A-60 and 58-89A-70(c), (d), and (e).

A person seeking de minimis registration status shall notify the Commissioner, on a form prescribed by the Commissioner, attesting that the professional employer organization meets all of the eligibility requirements for de minimis registration status under this section and additionally provide, at a minimum, the following information:

(1) The name of the professional employer organization, the address of its principal office, the name of the contact person, and the taxpayer or employer identification number;

(2) A list by jurisdiction of each name under which the registrant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities;

(3) A list of all officers, directors, and controlling person(s) of the registrant and their biographical information in a form to be determined by the Commissioner; and

(4) The location of the business records of the person.

If the Commissioner finds that the person seeking de minimis registration has not fully met the requirements for de minimis registration, the person shall not be eligible for de minimis registration status, and the Commissioner shall notify the person in writing. Within 30 days after service of the notification, the person may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the person shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the person may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the person disagrees with the outcome.

If the Commissioner determines that the notification of eligibility for de minimis registration is incomplete, the Commissioner shall notify the person of the deficiency, and the registrant shall be allowed time, not to exceed 15 days from the date of the notice, to correct the deficiency. Failure of the person to correct the deficiency within the 15-day time period shall result in the de minimis being deemed denied. Except as otherwise provided in this section, a person notified of a deficiency under this section may continue to operate while the deficiency is being corrected unless the

Commissioner determines that the person is ineligible for de minimis registration status or is otherwise not authorized to operate in this State.

After a de minimis registrant's initial notification, a de minimis registrant shall annually notify the Commissioner of its continuing eligibility for de minimis registration status no earlier than January 1 and no later than January 15 of each year. The annual notification shall include the attestation of eligibility for de minimis registration and any change in the information previously provided to the Commissioner under this section."

SECTION 4. G.S. 58-89A-110(d) reads as rewritten:

"(d) A license shall not be issued to any professional employer organization unless (i) the organization first files with the Commissioner evidence of workers' compensation coverage for all assigned employees in this State, including those leased from or coemployed with another ~~person, and that the premium paid by the licensee is~~ person, and (ii) the organization certifies to the Commissioner that it has provided its workers' compensation carrier with proper and necessary documentation to allow the carrier to determine and charge a premium that is commensurate with exposure and anticipated claim experience for all employees covered under policies issued by the carrier in the name of the licensee."

SECTION 5. Section 2 of S.L. 2004-162 reads as rewritten:

"**SECTION 2.** The Department of Insurance shall report to the ~~2005~~ 2007 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

SECTION 6. Effective March 31, 2005, Section 3 of S.L. 2004-162 reads as rewritten:

"**SECTION 3.** A person registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ December 31, 2004, may continue to operate pending approval of the person's application for a license as long as the application is filed with the Commissioner no later than ~~April 1, 2005.~~ July 1, 2005. If the application for licensure is denied, the person shall cease offering professional employer services in this State. ~~A~~ Except as otherwise provided herein, a person not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective date of this act~~ December 31, 2004, shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

A person that was not registered to engage in and offer professional employer services in this State, pursuant to G.S. 58-89-15 on December 31, 2004, may engage in and offer professional employer services prior to approval of licensure upon satisfying each of the following conditions:

(1) The person submits with its application an audited GAAP financial statement that has been issued no more than 90 days from the date the application is received by the Commissioner, and the statement is accompanied by an unqualified opinion;

(2) The person is a licensed or registered professional employer organization in good standing in at least one other state of the United States;

(3) The person has a client preexisting December 31, 2004, and that client acquires or adds employees in this State on or before July 1, 2005; and

(4) The person has submitted his or her application for licensure in compliance with the provisions of Article 89A of Chapter 58 of the General Statutes on or before July 1, 2005.

The conditional authority to engage in and offer professional employer services pursuant to this provision shall cease upon the earliest of the following: the granting of a license under Article 89A of Chapter 58 of the General Statutes, the denial of a license under Article 89A of Chapter 58 of the General Statutes, or the failure to satisfy any of the conditions upon which the conditional authority exists.

Notwithstanding any other provision of this act, an audited GAAP financial statement filed with the Commissioner by an applicant for licensure that otherwise meets the requirements of this act shall be accepted by the Commissioner if it has been filed with the Commissioner on or before July 1, 2005, has been issued within the previous 180 days, and covers a fiscal year that ended December 31, 2004, or is otherwise acceptable to the Commissioner."

SECTION 7. G.S. 58-6-25(d) is amended by adding a new subdivision to read:

"(9) Money appropriated to the Department of Insurance for the regulation of the professional employer organization industry pursuant to Article 89A of Chapter 58 of the General Statutes."

SECTION 8. Except as otherwise expressly provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:12 p.m. on the 29th day of June, 2005.

H.B. 678 **Session Law 2005-125**

AN ACT ALLOWING THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN BIDS ON CERTAIN SERVICE CONTRACTS WITHOUT OBTAINING APPROVAL FROM THE STATE PURCHASING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-53 is amended by adding the following new subsection to read:

"§ **143-53. Rules.**

…

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:15 p.m. on the 29th day of June, 2005.

H.B. 698 **Session Law 2005-126**

AN ACT TO EXPAND THE FINDINGS, THE PURPOSE, AND THE APPROVED PRACTICES OF THE CURRENT FOREST DEVELOPMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-177 reads as rewritten:

"§ **113A-177. Statement of purpose.**

(a) The General Assembly finds that:

(1) It is in the public interest of the State ~~of North Carolina~~ to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, ~~although currently of a local and sporadic nature,~~ particularly the rapid loss of forest land to urban development, are occurring as a result of ~~forest operations.~~ population growth. It is in the State's interest that corrective action be developed now to ~~prevent more serious problems~~ offset forest land losses in the future.

(3) Regeneration of potentially productive forest land is a high-priority problem requiring prompt attention and action. Private forest land will become more important to meet the needs of the State's population.

(4) Growing demands on forests and related land resources cannot be met by intensive management of public and industrial forest lands alone.

(b) The purpose of this Article is to direct the Secretary ~~of Environment and Natural Resources~~ to implement a forest development program to:

(1) Provide financial assistance to eligible landowners to increase the productivity of the privately owned forests of the State through the application of forest renewal ~~practices;~~practices and other practices that improve tree growth and overall forest health.

(2) Insure that forest operations in the State are conducted in a manner designed to protect the soil, air, and water resources, including but not limited to streams, lakes and estuaries through actions of landowners on lands for which assistance is sought under provisions in this ~~Article;~~Article.

(3) Implement a program of voluntary landowner participation through the use of a forest development fund to meet the above goals.

(c) It is the intent of the General Assembly that in implementing the program under this Article, the Secretary will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms and individuals furnishing services and materials needed in the application of practices included in the forest development program."

SECTION 2. G.S. 113A-178(2) reads as rewritten:

"(2) 'Approved practices' mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, ~~or~~ of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature ~~timber.~~ timber, or of insuring maximum growth potential of forest stands to commercial production levels. Such practices shall include those required to accomplish site preparation, natural and

artificial forestation, noncommercial removal of residual stands for silvicultural purposes, ~~and~~ cultivation of established young growth of desirable ~~trees.~~ trees for silvicultural purposes, and improvement of immature forest stands for silvicultural purposes. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:16 p.m. on the 29th day of June, 2005.

S.B. 15 **Session Law 2005-127**

AN ACT TO ALLOW STATE-OWNED PROPERTY TO BE MOVED FROM ONE COUNTY WATER AND SEWER DISTRICT TO ANOTHER AND TO INCREASE THE MAXIMUM ANNUAL PER DIEM OF MEMBERS OF WATER AND SEWER AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 162A of the General Statutes is amended by adding the following new section to read:

"§ **162A-87.1B. Transfer of State-owned property from one district to another.**

If any property owned by the State is located in a county water and sewer district, the board of commissioners of that county by resolution may transfer the property to another county water and sewer district in that county. This section only applies if the State acquired the property from the county. Any such resolution shall become effective on the date specified in the resolution, and a copy of the resolution shall be sent to the Department of Administration."

SECTION 2. G.S. 162A-5(c) reads as rewritten:

"(c) Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of ~~two thousand dollars ($2,000)~~four thousand dollars ($4,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties."

SECTION 3. This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter 162 of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:17 p.m. on the 29th day of June, 2005.

H.B. 395 **Session Law 2005-128**

AN ACT TO DESIGNATE THE DIVISION OF FOREST RESOURCES AS AN EMERGENCY RESPONSE AGENCY.

Whereas, the Division of Forest Resources of the Department of Environment and Natural Resources is the lead emergency response agency in North Carolina for the suppression of wildland fires; and

Whereas, the Division of Forest Resources plays a critical role in public safety through emergency response, assistance, and recovery; and

Whereas, the Division of Forest Resources plays a key role in training other State and local agencies in the Incident Command System and the National Incident Management System; and

Whereas, the Division of Forest Resources responds with trained and experienced personnel and equipment in support of the Division of Emergency Management of the Department of Crime Control and Public Safety during all-risk incidents; and

Whereas, the Division of Forest Resources provides emergency response to county emergency operations centers during times of both nondeclared states of emergency and declared disasters; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-18. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of Environment and Natural Resources is designated an emergency response agency of the State of North Carolina for purposes of:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.

(2) Receipt of any applicable State or federal funding.

(3) Training of other State and local agencies in disaster and emergency management.

(4) Any other disaster and emergency response roles for which the Division has special training or qualifications."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:18 p.m. on the 29th day of June, 2005.

H.B. 1262 **Session Law 2005-129**

AN ACT AUTHORIZING THE NORTH CAROLINA SOCIAL WORK CERTIFICATION AND LICENSURE BOARD TO EMPLOY PERSONNEL NECESSARY TO CARRY OUT THE PROVISIONS OF THE SOCIAL WORK CERTIFICATION AND LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90B-6 is amended by adding the following new subsection to read:

"(j) The Board shall have the power to employ or retain professional personnel, including legal counsel, subject to G.S. 114-2.3, or clerical or other special personnel deemed necessary to carry out the provisions of this Chapter."

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

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 1:18 p.m. on the 29th day of June, 2005.

H.B. 1209 **Session Law 2005-130**

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION PROGRAM TO INCLUDE SEXUAL BATTERY AS A REPORTABLE OFFENSE, AND ADD SEXUAL BATTERY TO THE OFFENSES REQUIRING A DNA SAMPLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 2. G.S. 15A-266.4 reads as rewritten:

"§ **15A-266.4. Blood sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.**

(a) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on or after December 1, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321 shall have a DNA sample drawn upon intake to jail, prison, or the mental health facility. In addition, every person convicted on or after December 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to December 1, 2003, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321 before December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

(2) G.S. 14-32.1 – Assaults on handicapped persons.

(3) G.S. 14-277.3 – Stalking.

(4) G.S. 14-27.5A – Sexual battery."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 2005.

Became law upon approval of the Governor at 1:21 p.m. on the 29th day of June, 2005.

S.B. 178 **Session Law 2005-131**

AN ACT AMENDING CERTAIN LAWS RELATING TO LICENSURE REQUIREMENTS FOR PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(b)(6) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. –

…

(6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be made available online without charge and supplied at no cost to the potential examinee. The Board may offer written examinations or administer examinations by computer within 30 days after approving an application. Applicants shall be permitted to obtain the test score from each part of computerized examinations immediately upon completion of the examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any examination shall not be reexamined until after 90 days

from the date the person was last examined. An applicant who fails to pass any examination may take the failed portion within six months of the date approved to take the examination without retaking the portion passed. The Board may require applicants who fail ~~the~~ any part of the examination three times to receive additional education before the applicant is allowed to retake the ~~examination.~~examination or wait one year before retaking any portion of the examination.

…."

SECTION 2. G.S. 87-22 reads as rewritten:

"§ **87-22. License fee; expiration and renewal; reinstatement.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, shall pay an annual license fee not to exceed one hundred fifty dollars ($150.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. Persons who obtain a license by passing an examination on or after October 1 of any year may receive a license for the remainder of the year by paying one-half of the usual license fee for that classification of license. It shall be the duty of the secretary and treasurer to send by United States mail or e-mail to every licensee registered with the Board, notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, the notice to be mailed at least one month in advance of the expiration of the license. The Board may require payment of all unpaid annual fees before reissuing a license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the required fee during the month of January in each year, the Board shall increase the license fee by twenty-five dollars ($25.00) to cover any additional expense associated with late renewal. The Board shall require reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars ($25.00)."

SECTION 3. G.S. 87-22.1 reads as rewritten:

"§ **87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.**

The Board shall charge a nonrefundable application and examination fee not to exceed one hundred fifty dollars ($150.00) for each ~~examination,~~examination or any part of an examination, and the funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. The application and examination fee shall be retained by the Board whether or not the applicant is granted a license. Until changed by the Board pursuant to rules adopted by the Board, the fee for each examination or any part taken on a particular day shall be one hundred dollars ($100.00)."

SECTION 4. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:22 p.m. on the 29th day of June, 2005.

H.B. 672 **Session Law 2005-132**

AN ACT TO REDUCE THE HOLDING PERIOD FOR CERTAIN UNCLAIMED PROPERTY HELD AS STOCK OR OTHER EQUITY INTERESTS IN A BUSINESS ASSOCIATION, INCLUDING CASH DISTRIBUTIONS OF A DEMUTUALIZED INSURANCE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-53(c) reads as rewritten:

"(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after ~~issuance;~~ issuance.

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the ~~property;~~ property.

(3) Money order, cashier's check, teller's check, and certified check, seven years after ~~issuance;~~ issuance.

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, ~~five~~ three years after the earlier of:

a. The date of a cash dividend or other ~~cash~~ distribution unclaimed by the apparent ~~owner, or~~owner.

b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent ~~owner;~~owner.

c. The date the holder discontinued mailings, notifications, or communications to the apparent owner.

This subdivision applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

(5) Debt of a business association, ~~other than a~~ including debt evidenced by a matured or called bearer bond or an original issue discount bond, ~~five~~ three years after the date of an interest or principal payment unclaimed by the apparent ~~owner;~~ owner.

(5a) Any dividend, profit, distribution, interest, redemption, payment on principal, cash compensation (including amounts from a demutualized insurance company), or other sum held or owing by a business association for or to its shareholder, certificate holder, policyholder, member, bondholder, or other security holder, who has not claimed it,

or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery.

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the ~~property;~~ property.

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation ~~accrued;~~ accrued.

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift ~~card;~~ card.

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is ~~based;~~ based.

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes ~~distributable;~~ distributable.

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution ~~date;~~ date.

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes ~~distributable;~~ distributable.

(13) Wages or other compensation for personal services, two years after the compensation becomes ~~payable;~~ payable.

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes ~~payable;~~ payable.

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax ~~penalty; and~~ penalty.

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs."

SECTION 2. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 1:24 p.m. on the 29th day of June, 2005.

H.B. 874 **Session Law 2005-133**

AN ACT TO CHANGE THE TITLE OF THE SAFETY AND HEALTH REVIEW BOARD UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF NORTH CAROLINA TO THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, TO CHANGE THE TITLE OF THE OFFICE OF OCCUPATIONAL SAFETY AND HEALTH TO THE OCCUPATIONAL SAFETY AND HEALTH DIVISION, AND TO RESTORE THE AUTHORITY OF THE BOARD TO ASSESS PENALTIES IN THE CASE OF AN APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act.

SECTION 2. G.S. 95-126(b)(2) reads as rewritten:

"(b) Legislative findings and purpose:

…

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:

a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review ~~board~~ commission for carrying out adjudicatory functions under this Article;

d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;

h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;

i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;

j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

l. By authorizing the Commissioner to enter into contracts with the Department of Health and Human Services, or any other State or local units, to the end the Commissioner and the Department of Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.

m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina."

SECTION 3. G.S. 95-127(2) reads as rewritten:

"(2) The term ~~"Board"~~'Commission' means the ~~Safety and Health Review Board~~North Carolina Occupational Safety and Health Review Commission established under this Article."

SECTION 4. G.S. 95-133 reads as rewritten:

"§ **95-133. Office of Director of Occupational Safety and Health; powers and duties of the Director.**

(a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the ~~Office of~~ Occupational Safety and ~~Health.~~ Health Division. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this Article, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments,

or revisions in rules, as he may deem advisable for the administration of the office, he shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his duties of office and shall not hold any other office. The Director, subject to the approval of the Commissioner, shall select a professional staff of qualified and competent employees to assist in the statewide administration of the Article. All of the employees referred to herein shall be under the classified service, as herein defined in G.S. 95-127, subdivision (3).

(b) Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the ~~Office~~ Division to administer and enforce. The Director shall have the power, jurisdiction and authority to:

(1) Uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;

(2) Make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the office has the duty, power and authority to enforce are promptly and effectively carried out;

(3) Make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this Article and all lawful regulations issued thereunder;

(4) Report to the Federal Occupational Safety and Health Administration any information which it may require;

(5) Recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;

(6) Recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this Article;

(7) Employ experts, consultants or organizations for work related to the occupational safety and health program of the ~~Office~~ Division and compensate same with the approval of the Commissioner;

(8) Institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this Article;

(9) The Commissioner shall have the power and authority to issue all types of notices, citations, cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this Article as hereinafter set forth. The Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this Article or not in compliance with this Article and to apply for mandatory injunctions to compel enforcement of the Article, and the Commissioner is authorized, and further authorized by and

through his agents, to institute criminal actions or proceedings for such violations of the Article as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this Article, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the ~~Board~~ Commission as hereinafter set forth.

(10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.

(11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this Article and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.

(12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject to review by the ~~Board~~ Commission as hereinafter provided, including all assessments for civil penalties."

SECTION 5. G.S. 95-135 reads as rewritten:

"§ **95-135. ~~Safety and Health Review Board.~~North Carolina Occupational Safety and Health Review Commission.**

(a) The ~~Safety and Health Review Board~~North Carolina Occupational Safety and Health Review Commission is hereby established. The ~~Board~~ Commission shall be composed of three members from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the ~~Board~~ Commission under this Article. The Governor shall appoint the members of the ~~Board~~ Commission and name one of the members as chairman of the ~~Board.~~Commission. The terms of the members of the ~~Board~~ Commission shall be six years except that the members of the ~~Board~~ Commission first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and the member of the ~~Board~~ Commission designated as chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled by the Governor for the remainder of the unexpired term. The Governor shall fill all vacancies occurring by reason of the expiration of the term of any members of the ~~Board.~~Commission.

(b) The ~~Board~~ Commission shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the ~~Board~~ Commission until after full and adequate hearing. The ~~Board~~ Commission in the discharge of its duties under this Article is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue

subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any appeal or proceeding for review before the ~~Board.~~Commission.

(c) The ~~Board~~ Commission shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days' notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the ~~Board~~ Commission for the administrative operations of the ~~Board~~ Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the ~~Board's~~ Commission's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the ~~Board,~~Commission, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct, incompetency, the commission of any crime, or for any other good and adequate reason as found by the ~~Board.~~Commission. The ~~Board~~ Commission shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the ~~Board,~~Commission, and its decision shall be final. The compensation of the members of the ~~Board~~ Commission shall be on a per diem basis and shall be fixed by the Governor. The chairman of the ~~Board~~ Commission may be paid a higher rate of compensation than the other two members of the ~~Board.~~Commission. For the purpose of carrying out its duties and functions under this Article, two members of the ~~Board~~ Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members of the ~~Board.~~Commission. On matters properly before the ~~Board~~ Commission the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the ~~Board.~~Commission. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review. Prior to taking any action under this subsection to set compensation, the Governor may consult with the Advisory Budget Commission.

(d) Every official act of the ~~Board~~ Commission shall be entered of record and its hearings and records shall be open to the public. The ~~Board~~ Commission is authorized and empowered to make such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the ~~Board~~ Commission adopts a different rule, the proceedings, as nearly as possible, shall be in accordance with the Rules of Civil Procedure, G.S. 1A-1. The ~~Board~~ Commission may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to appear and testify and produce like documentary evidence before the ~~Board.~~Commission. Witnesses whose depositions are taken under this section, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the State.

(e) The rules of procedure prescribed or adopted by the ~~Board~~ Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(f) Any member of the ~~Board~~ Commission may be removed by the Governor for inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such removal the Governor shall give notice of hearing and state the allegations against the member of the ~~Board,~~Commission, and the same shall be heard by the Governor, and his decision shall be final. The principal office of the ~~Board~~ Commission shall be in

Raleigh, North Carolina, but whenever it deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, the ~~Board~~ Commission may hold hearings or conduct other proceedings at any place in the State.

(g) In case of a contumacy, failure or refusal of any person to testify before the ~~Board,~~Commission, give any type of evidence, or to produce any books, records, papers, correspondence, memoranda or other records, such person upon such failure to obey the orders of the ~~Board~~ Commission may be punished for contempt or any other matter involving contempt as set forth and described by the general laws of the State. The ~~Board~~ Commission shall issue no order for contempt without first finding the facts involved in the proceeding. Witnesses appearing before the ~~Board~~ Commission shall be entitled to the same fees as those paid for the services of said witnesses in the courts of the State, and all such fees shall be taxed against the interested parties according to the judgment and discretion of the ~~Board.~~Commission.

(h) The Director shall consult with the chairman of the Board with respect to the preparation and presentation to the ~~Board~~ Commission for adoption of all necessary forms or citations, notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms of notices or applications for review by the ~~Board,~~Commission, and any and all other procedural papers and documents necessary for the administration of the Article as applied to employers and employees and for all procedures and proceedings brought before the ~~Board~~ Commission for review.

(i) A hearing examiner appointed by the chairman of the ~~Board~~ Commission shall hear, and make a determination upon, any proceeding instituted before the ~~Board~~ Commission and may hear any motion in connection therewith, assigned to the hearing examiner, and shall make a report of the determination which constitutes the hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for the hearing examiner's determination. The report of the hearing examiner shall become the final order of the ~~Board~~ Commission 30 days from the date of the report as determined by the hearing examiner, unless within the 30-day period any member of the ~~Board~~ Commission had directed that the report shall be reviewed by the entire ~~Board~~ Commission as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the ~~Board~~ Commission shall schedule the matter for hearing, on the record, except the ~~Board~~ Commission may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of the hearing and shall be allowed to appear in person or by attorney at the hearing. Upon review of the report and determination by the hearing examiner the ~~Board~~ Commission may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report of the hearing examiner, and the report, decision, or determination of the ~~Board~~ Commission upon review shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The report, decision or determination of the ~~Board~~ Commission upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain Administrative Agencies.

(j) Repealed by Session Laws 1993, c. 300, s. 1."

SECTION 6. G.S. 95-137(b)(2) reads as rewritten:

"(b) Procedure for Enforcement. –

…

(2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the ~~Board~~ Commission in case of any review proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court."

SECTION 7. G.S. 95-137(b)(4) reads as rewritten:

"(b) Procedure for Enforcement. –

…

(4) If an employer notifies the Director that the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the ~~Board~~ Commission of such notification, and the ~~Board~~ Commission shall afford an opportunity for a hearing. The ~~Board~~ Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the ~~Board~~ Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section."

SECTION 8. G.S. 95-138 reads as rewritten:

"§ **95-138. Civil penalties.**

(a) The ~~Commissioner,~~ Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of

an appeal, may assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order promulgated pursuant to this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) for each willful or repeat violation.

(2) A maximum penalty of seven thousand dollars ($7,000) for each nonserious or serious violation.

(3) A maximum penalty of seven thousand dollars ($7,000) for each day that an employer fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the ~~Board~~ Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties.

(4) A maximum penalty of seven thousand dollars ($7,000) for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the ~~Board,~~ Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged.

(2) The gravity of the violation.

(3) The good faith of the employer.

(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

The report of the hearing examiner and the report, decision, or determination of the ~~Board~~ Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 9. G.S. 95-152 reads as rewritten:

"§ **95-152. Confidentiality of trade secrets.**

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article which contains or which might reveal a trade secret shall be considered confidential, as provided by section 1905 of Title 18 of U.S.C., except as to carrying out this Article or when it is relevant in any proceeding under this Article. In any such proceeding the Commissioner, the ~~Board~~ Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets."

SECTION 10. G.S. 150B-1(e)(9) reads as rewritten:

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

…

(9) ~~The Occupational Safety and Health Review Board.~~The North Carolina Occupational Safety and Health Review Commission."

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

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 1:22 p.m. on the 29th day of June, 2005.

S.B. 537 **Session Law 2005-134**

AN ACT TO ALLOW THE PAYMENT OF TAXES IN LIMITED CIRCUMSTANCES BY OFFSET OF AN OBLIGATION OWED TO THE TAXPAYER BY THE TAXING UNIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-357(a) reads as rewritten:

"(a) Medium of Payment. – Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, bonds or notes of the taxing unit, and payments in kind shall not be accepted in payment of ~~taxes, nor shall any~~ taxes. A taxing unit may not permit the payment of taxes by offset of any bill, claim, judgment, or other obligation owed to the taxpayer by the taxing unit. The prohibition against payment of taxes by offset does not apply to offset of an obligation arising from a lease or another contract entered into between the taxpayer and the taxing unit before July 1 of the fiscal year for which the unpaid taxes were levied."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 1:32 p.m. on the 29th day of June, 2005.

H.B. 1199 **Session Law 2005-135**

AN ACT TO PROVIDE THAT A PHYSICIAN OR ELIGIBLE PSYCHOLOGIST MAY FILE AN AFFIDAVIT FOR INVOLUNTARY COMMITMENT WITH THE CLERK OR MAGISTRATE EITHER BY HAND DELIVERY OF THE ORIGINAL AFFIDAVIT OR BY FACSIMILE TRANSMISSION OF A PAPER COPY OF THE AFFIDAVIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

"§ **122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.**

…

(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the

affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 2:39 p.m. on the 29th day of June, 2005.

S.B. 396 **Session Law 2005-136**

AN ACT ALLOWING COUNTIES TO MAKE CHANGES IN SERVICE DISTRICTS CREATED PURSUANT TO ARTICLE 16 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-304.3. Changes in adjoining service districts.**

(a) Changes. – The board of county commissioners may by resolution relocate the boundary lines between adjoining county service districts if the districts were established for substantially similar purposes. The boundary lines may be changed in accordance with a petition from landowners or may be changed in any manner the board deems appropriate. Upon receipt of a request to change service district boundaries, the board of county commissioners shall set a date and time for a public hearing on the request prior to taking action on the request.

(b) Report. – Before the public hearing required by subsection (a) of this section, the board of county commissioners shall cause to be prepared a report containing all of the following:

(1) A map of the service district and the adjacent territory showing the current and proposed boundaries of the district.

(2) A statement indicating that the proposed boundary relocation meets the requirements of subsection (a) of this section.

(3) A plan for providing service to the area affected by the relocation of district boundaries.

(4) The effect that the changes in the amount of taxable property will have on the ability of the district to provide services or to service any debt.

The report shall be available for public inspection in the office of the clerk of the board for at least two weeks before the date of the public hearing.

(c) Notice and Hearing. – The board shall hold a public hearing before adopting any resolution relocating the boundaries of a service district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing.

(d) Effective Date. – The resolution changing the boundaries of the districts shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board."

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

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 2:41 p.m. on the 29th day of June, 2005.

H.B. 821 **Session Law 2005-137**

AN ACT RELATING TO THE ADMISSIBILITY OF THE RESULTS OF SPEED-MEASURING INSTRUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-50.2 reads as rewritten:

"§ **8-50.2. Results of speed-measuring instruments; admissibility.**

(a) The results of the use of radio microwave, laser, or other speed-measuring instruments shall be admissible as evidence of the speed of an object in any criminal or civil proceeding for the purpose of corroborating the opinion of a person as to the speed of an object based upon the visual observation of the object by such person.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a radio microwave, laser, or other electronic speed-measuring instrument are not admissible in any proceeding unless it is found that:

(1) The operator of the instrument held, at the time the results of the speed-measuring instrument were obtained, a certificate from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) authorizing him to operate the speed-measuring instrument from which the results were obtained.

(2) The operator of the instrument operated the speed-measuring instrument in accordance with the procedures established by the Commission for the operation of such instrument.

(3) The instrument employed was approved for use by the Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(4) The speed-measuring instrument had been calibrated and tested for accuracy in accordance with the standards established by the Commission for that particular instrument.

(c) All radio ~~microwave~~ microwave, laser, and other electronic speed-measuring instruments shall be tested for accuracy within a 12-month period prior to the alleged violation by a technician possessing at least a ~~second-class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission within a period of 12 months prior to the alleged violation.~~ General Radiotelephone Operator License from the Federal Communications Commissions or possessing a Certified Electronics Technician certificate issued by a Federal Communications Commission Commercial Operators License Examination Manager or by a laboratory established by the International Association of Chiefs of Police. A written certificate by ~~such~~ the technician or laboratory showing that the test was made within the required period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.

All ~~laser~~ radio microwave, laser, and other speed enforcement instruments shall be tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission. The Commission shall provide for certification of ~~laser~~ all radio microwave, laser, and other speed enforcement instruments. ~~A written certificate by a technician certified by the Commission showing that a test was made within the required testing period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.~~

(d) In every proceeding where the results of a radio microwave, laser, or other speed-measuring instrument is sought to be admitted, judicial notice shall be taken of the rules approving the use of the models and types of radio ~~microwave~~ microwave, laser, and other speed-measuring instruments and the procedures for operation and calibration or measuring accuracy of such instruments."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

Became law upon approval of the Governor at 2:43 p.m. on the 29th day of June, 2005.

S.B. 465 **Session Law 2005-138**

AN ACT TO CLARIFY THE SERVICE AND FILING REQUIREMENTS OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (b) of G.S. 1A-1, Rule 5, reads as rewritten:

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be

served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation, except with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, the certificate shall also show the telefacsimile number of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules."

SECTION 2. Subsection (d) of G.S. 1A-1, Rule 5, reads as rewritten:

"(d) Filing. – ~~All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3), depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.~~ The following papers shall be filed with the court, either before service or within five days after service:

(1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the complaint, whether such pleadings are original or amended.
(2) Written motions and all notices of hearing.
(3) Any other application to the court for an order that may affect the rights of or in any way commands any individual, business entity, governmental agency, association, or partnership to act or to forego action of any kind.
(4) Notices of appearance.
(5) Any other paper required by rule or statute to be filed.

(6) Any other paper so ordered by the court.

(7) All orders issued by the court.

All other papers, regardless of whether these rules require them to be served upon a party, should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed with the clerk of court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered."

SECTION 3. Subsection (f) of G.S. 1A-1, Rule 30, reads as rewritten:

"(f) Certification ~~and filing~~ by person administering the oath; exhibits; ~~copies; notice of filing.~~ copies. –

(1) The person administering the oath shall certify that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. This certificate shall be in writing and accompany the sound-and-visual or sound recording or transcript of the deposition. He shall then place the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy.

Documents and things produced for inspection during the examination of the deponent shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the person administering the oath shall furnish a copy of the deposition to any party or to the deponent.

~~(3) The clerk shall give prompt notice of the filing of a deposition to all parties.~~"

SECTION 4. G.S. 1A-1, Rule 31, reads as rewritten:

"**Rule 31. Depositions upon written questions.**

(a) Serving questions; notice. – After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45 provided that no subpoena need be served on a deponent who is a party or an officer, director or managing agent of a party, provided the party has been served with notice pursuant to this rule. Such a deposition shall be taken in the county where the witness resides or is employed or transacts his business in person unless the

witness agrees that it may be taken elsewhere. The deposition of a person confined in prison or of a patient receiving in-patient care in or confined to an institution or hospital for the mentally ill or mentally handicapped may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Person to take responses and prepare record. – A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the person designated in the notice to take the deposition, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the deponent in response to the questions and to prepare, certify, and ~~file or~~ mail the deposition, attaching thereto the copy of the notice and the questions received by him.

~~(c) Notice of filing. – When the deposition is filed the clerk shall promptly give notice thereof to all parties.~~"

SECTION 5. Subsection (a) of G.S. 1A-1, Rule 32, reads as rewritten:

"(a) Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding or upon a hearing before a referee, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a person called as a witness may also be used as substantive evidence by any party adverse to the party who called the deponent as a witness and it may be used by the party calling deponent as a witness as substantive evidence of such facts stated in the deposition as are in conflict with or inconsistent with the testimony of deponent as a witness.

(3) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose, whether or not the deponent testifies at the trial or hearing.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: that the witness is dead; or that the witness is at a greater distance than 100 miles from the place

of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting testimony of witnesses orally in open court, to allow the deposition to be used; or the witness is an expert witness whose testimony has been procured by videotape as provided for under Rule 30(b)(4).

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action and duly ~~filed in the former action~~ prepared, certified, and delivered in accordance with Rule 30 may be used in the latter as if originally taken therefor."

SECTION 6. Subsection (d) of G.S. 1A-1, Rule 32, reads as rewritten:

"(d) Effect of errors and irregularities in depositions. –

(1) As to Notice. – All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Person before Whom Taken. – Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition. –

a. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the

succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. – Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, ~~filed,~~ or otherwise dealt with by the person taking the deposition under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defeat is, or with due diligence might have been, ascertained."

SECTION 7. This act becomes effective October 1, 2005, and applies to all pending cases and all cases filed after the effective date of this act.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Became law upon approval of the Governor at 2:48 p.m. on the 29th day of June, 2005.

H.B. 1064 **Session Law 2005-139**

AN ACT REGARDING THE OPERATION OF PUBLIC ENTERPRISES BY THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-312 reads as rewritten:

"§ **160A-312. Authority to operate public enterprises.**

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its ~~citizens.~~ citizens and other areas and their citizens located outside the corporate limits of the city. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable ~~limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.~~limitations.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, and shall comply with all of the following:

(1) The rules shall apply equally to the public enterprise system both within and outside the corporate limits of the ~~city,~~city.

(2) The rules may not apply differing treatment within and outside the corporate limits of the city.

(3) The rules shall make access to public enterprise services available to the city and its citizens and other areas and their citizens located outside the corporate limits of the city equally.

(4) The rules may prioritize the continuation of the provision of services based on availability of excess capacity to provide the service.

(5) The rules ~~and~~ may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the

surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise.

(d) A city shall account for a public enterprise in a separate fund and may not transfer any money from that fund to another except for a capital project fund established for the construction or replacement of assets for that public enterprise. Obligations of the public enterprise may be paid out of the separate fund. Obligations shall not include any other fund or line item in the city's budget."

SECTION 2. G.S. 160A-31(a) reads as rewritten:

"(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such ~~owner.~~ owner and a statement that the owner's petition for annexation is not based upon any representation by the municipality that a public enterprise service available outside the corporate limits of that municipality would be withheld from the owner's property without the petition for annexation."

SECTION 3. G.S. 160A-58.1(c) reads as rewritten:

"(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. The petition shall also contain a statement from the owner that the owner's petition for annexation is not based upon any representation by the municipality that a public enterprise service available outside the corporate limits of that municipality would be withheld from the owner's property without the petition for annexation. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition."

SECTION 4. This act applies only to the City of Asheville. Section 1 of this act shall not apply to the operation of public transportation systems or off-street parking facilities and systems as public enterprises.

SECTION 5. This act becomes effective June 30, 2005. Section 1 of this act applies to the fiscal year 2005-2006 and thereafter. Any assets, liabilities, or equity of a public enterprise operated or held by the city during the fiscal year 2004-2005 shall be transferred to a separate fund in accordance with G.S. 160A-312, as amended by Section 1 of this act, when this act becomes law. Sections 2 and 3 apply to petitions for annexation received by the municipality on or after June 30, 2005.

In the General Assembly read three times and ratified this the 29th day of June, 2005.

Became law on the date it was ratified.

H.B. 1065 **Session Law 2005-140**

AN ACT REGARDING WATER RATES IN BUNCOMBE COUNTY.

Whereas, the North Carolina General Assembly previously adopted Chapter 399 of the 1933 Public-Local Laws (known as the "Sullivan Act") to address the

particular circumstances of the supplying of water to certain residents of Buncombe County by the City of Asheville and the charges therefore; and

Whereas, from the adoption of the Sullivan Act until the present, the City of Asheville, directly or through the Asheville/Buncombe Water Authority, has continued to supply water to certain consumers of water in Buncombe County outside the corporate limits of the City of Asheville in those areas of the County where water has been supplied by the City of Asheville, all at a rate no higher than that charged by the City of Asheville to similarly situated water consumers residing within the corporate limits of said city; and

Whereas, from and after 1981, the City of Asheville and the County of Buncombe have discharged various of their obligations relating to the provision of water to certain citizens of Buncombe County residing inside and outside the corporate limits of the City of Asheville and the maintenance and upkeep of their respective water facilities pursuant to an Agreement between the City of Asheville and the County of Buncombe establishing the Asheville/Buncombe Water Authority dated 29 October 1981 and certain supplements and amendments thereto (hereinafter "Water Agreement"); and

Whereas, practically all, if not all, of the cost of the waterlines serving Buncombe County (outside of the corporate limits of the City of Asheville) has been paid by the County of Buncombe, the various water and sewer districts of the County of Buncombe, by the Asheville/Buncombe Water Authority pursuant to its duties to Buncombe County, and by private developers and landowners, desiring water service in such areas and not paid by the City of Asheville; and

Whereas, during the term of the Water Agreement, the County of Buncombe has paid directly to the City of Asheville in excess of $37,000,000 pursuant to that Agreement; and

Whereas, at the time of the adoption of the Water Agreement, certain public recreational facilities were transferred to the County of Buncombe by the City of Asheville, and during the term of the Water Agreement, the costs related to those facilities have been borne by the County of Buncombe; and

Whereas, during the term of the Water Agreement, the County of Buncombe has expended $9,025,715 on capital expenditures for the public recreational facilities referenced above; and

Whereas, the City of Asheville has given notice to terminate the Water Agreement as of 30 June 2005; and

Whereas, the City of Asheville is entitled to a fair return on its capital investment; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of the public recreational facilities shall revert to the City of Asheville; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of all water system facilities conveyed to the City of Asheville pursuant to the Water Agreement shall revert to the County of Buncombe and its water districts; and

Whereas, the citizens of Buncombe County outside the corporate limits of the City of Asheville now, or in the future to be, supplied water from lines connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto**,** are entitled to obtain water at a fair rate from the water system for which they have paid, through taxes, through payments for

water, and through direct payments by the County of Buncombe and its water and sewer districts; and

Whereas, the population of Buncombe County is projected to grow by more than thirty-eight percent over the next twenty-five years, and more than two-thirds of that growth is projected to occur outside the current city limits of the City of Asheville; and

Whereas, the Asheville/Buncombe Water Authority has developed substantial excess capacity in anticipation of the growth of population in Buncombe County and of supplying water to the additional population from facilities the cost of which has been, and in the future will be, paid out of water system revenues; and

Whereas, the excess capacity in the water system maintained by the Asheville/Buncombe Water Authority is such that the system has a current capacity in excess of 41 million gallons per day and a current average usage of 22 million gallons per day; and

Whereas, the Mills River water treatment plant of the Asheville/Buncombe Water Authority was constructed at a location and in a manner that substantial additional capacity can be added to the water system now served by the Asheville/Buncombe Water Authority in the future without the construction of an additional water treatment plant; and

Whereas, the complicated pattern of dealings between the City of Asheville and the County of Buncombe regarding the provision of water to water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto has now given rise to the issue of the rate that the City of Asheville may charge the water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto to whom it provides water even though the Sullivan Act remains in full force and effect; and

Whereas, it is the exclusive right of the State to regulate the provision of and rates charged for public utilities to the citizens of the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. From and after the effective date of this act, it shall be unlawful for the City of Asheville, or any of the governing authorities, agents, or employees thereof, to charge, exact, or collect from any water consumer in Buncombe County currently or hereafter connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto a rate for water consumed higher than the rate charged for the same classification of water consumer residing or located within the corporate limits of the City of Asheville. Classification of water consumer as referred to herein means the type of facility to which the water is provided (e.g., single-family residence, multiple-family residence, retail, commercial, industrial) without regard to geographic location within Buncombe County.

SECTION 2. The City of Asheville may, through its officers, agents, and employees, cause any user of water who shall fail to pay promptly his water rent for any month to be cut off and his right to further use of water from the city system to be discontinued until payment of any water rent arrearages, all consistent with G.S. 160A-314(b).

SECTION 3. It shall be the duty of the Board of Commissioners of Buncombe County and/or the trustees of the different water districts operating outside of the corporate limits of the City of Asheville in Buncombe County to maintain the waterlines owned by the County of Buncombe and such water districts in proper repair in order that there may not be a waste of water by leakage.

SECTION 4. To the extent that the Sullivan Act (Chapter 399 of the Public-Local Laws of 1933) does not conflict with this act, it continues to apply.

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

In the General Assembly read three times and ratified this the 29th day of June, 2005.

Became law on the date it was ratified.

S.B. 388 **Session Law 2005-141**

AN ACT AMENDING THE CHARTER OF THE TOWN OF WATHA TO EXTEND THE TERMS OF OFFICE FOR THE MAYOR AND TOWN COUNCIL FROM TWO TO FOUR YEARS, AND TO ANNEX DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF BOLTON.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of the Charter of the Town of Watha, being Chapter 158 of the 1909 Private Laws, as amended by Chapter 884 of the 1989 Session Laws, reads as rewritten:

"Sec. 3. The elected officers of the town shall be a mayor and three ~~commissioners.~~commissioners, and they shall be elected by all the qualified voters of the entire town. In 2005, and quadrennially thereafter, the mayor and the town commissioners shall be elected for four-year terms or until their successors are elected and qualified. The commission's organizational meeting shall be fixed as provided in G.S. 160A-68."

SECTION 2. The corporate limits of the Town of Bolton are extended to include the following described territory:

TRACT ONE-EAST

BEGINNING at an OLD TOWN MONUMENT with N.C. Grid Coordinates: N=221,191.759 and E=2,176,127.352; and runs thence South 78 degrees, 29 minutes 59 seconds East 4,459.69 feet to a NEW TOWN MONUMENT; thence South 03 Degrees, 03 minutes, 55 seconds West 2,203.48 feet to another NEW TOWN MONUMENT; thence North 80 degrees 55 minutes 10 seconds West 439.00 feet to another NEW TOWN MONUMENT; thence South 08 degrees, 23 minutes, 54 seconds West 557.63 feet to another NEW TOWN MONUMENT; thence North 80 degrees, 19 minutes 08 seconds West 1,720.45 feet to another NEW TOWN MONUMENT; thence North 57 degrees, 08 minutes, 29 seconds West 2,811.07 feet to another NEW TOWN MONUMENT; thence North 05 degrees 10 minutes, 46 seconds East 492.76 feet to an OLD TOWN MONUMENT; thence North 06 degrees 10 minutes 00 seconds East 471.07 feet to an OLD TOWN MONUMENT; thence South 88 degrees, 13 minutes, 35 seconds East 200 feet to an OLD TOWN MONUMENT; thence North 01 degrees, 46 minutes, 25 seconds East 804.81 feet to an OLD TOWN MONUMENT, the POINT AND PLACE OF BEGINNING, and being all of that 260.73 acre tract of land as shown

on that Map entitled "Plat to Extend the East Corporate Limits of the TOWN OF BOLTON" Dated 7 March, 2005, by Billy M. Duncan, Land Surveyor and being recorded in the Register of Deeds Office, Columbus County, North Carolina, on the 23rd day of March, 2005, at 3:26:01 p.m. in Plat Book 79, Page 11. Reference is made to said recorded plat for a more particular and accurate description of the premises described herein.

TRACT TWO-WEST

BEGINNING at an OLD TOWN MONUMENT with the N.C. Grid Coordinates: N=208,233.482, E=2,175,586.827, said monument lying South 70 degrees 42 minutes, 35 seconds West 196.78 feet from N.C. Grid Monument "TON" with N.C. Grid coordinates: N=208,419.214, E=2,175,651.834; thence from said Beginning Point North 88 degrees, 22 minutes, 43 seconds West 604.31 feet to a NEW TOWN MONUMENT; thence North 15 degrees 17 minutes, 48 seconds West 2,336.48 feet to a NEW TOWN MONUMENT; thence North 71 degrees, 38 minutes, 14 seconds East 1,374.16 feet to an OLD TOWN MONUMENT, the Northwest corner of the 1915 Act to Incorporate the City of Bolton; thence with the OLD TOWN OF BOLTON LIMITS South 01 degrees, 46 minutes, 25 seconds West 2,705.00 feet to the OLD TOWN MONUMENT, the POINT AND PLACE OF BEGINNING; and being all of that 55.56 acre tract of land as shown on that map entitled "Plat to Extend the West Corporate Limits of the TOWN OF BOLTON" dated 7 March, 2005, by Billy M. Duncan, Land Surveyor, and being recorded in the Register of Deeds Office, Columbus County, N.C., on the 23rd day of March, 2005, at 3:26:15 p.m. in Plat Book 79, Page 12.
Reference is made to said recorded Plat for a more particular and accurate description of the premises described herein.

SECTION 3. This act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law on the date it was ratified.

H.B. 1063 **Session Law 2005-142**

AN ACT TO ALLOW THE TOWN OF KILL DEVIL HILLS TO MAKE CERTAIN ASSESSMENTS WITHOUT PETITION.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Kill Devil Hills, being Chapter 735 of the 1995 Session Laws, is amended by adding a new Article to read:

"ARTICLE VII. STREET/SIDEWALK/STORMWATER MANAGEMENT IMPROVEMENTS; ASSESSMENT OF COSTS.

"Sec. 7.1. **Authority.**

(a) The Town of Kill Devil Hills is not subject to G.S. 160A-217(a) when making special assessments for:

(1) Construction of new streets.
(2) Construction of new sidewalks.
(3) Widening of streets or sidewalks.
(4) Construction of new curbs.
(5) Construction of new gutters.

(b) If the Town of Kill Devil Hills elects to make assessments under the authority of subsection (a) of this section and a sidewalk is constructed on only one side of the street, the cost thereof may be assessed against the property abutting on both sides of the street, unless there already exists a sidewalk on the other side of the street, the total cost of which was assessed against the abutting property.

(c) The Town of Kill Devil Hills may not assess without petition under subsection (a) of this section except upon a four-fifths majority vote of the Board of Commissioners.

(d) This act is supplemental to any other authority of the Town."

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

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law on the date it was ratified.

H.B. 1020 **Session Law 2005-143**

AN ACT AUTHORIZING THE CITY OF STATESVILLE TO REGULATE THE DEMOLITION OF STRUCTURES WITHIN THE CITY'S HISTORIC DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding the provisions of G.S. 160A-400.14, a municipality may adopt an ordinance providing that no structure within a historic district in the municipality may be demolished without a permit issued by the city council. The city council shall consider the following in deciding whether to issue a permit: (i) the location of the structure within the historic district; (ii) the state of repair of the structure; (iii) the architectural and historical significance of the structure; (iv) the owner's plans with regards to replacing the structure; (v) the overall impact of the demolition of the structure on the historic district; and (vi) the economic impact of the denial of the permit upon the owner of the structure.

SECTION 1.(b) The city council may, as a condition of issuing a permit for demolition, require the owner to replace the structure to be demolished with another structure that meets plans submitted by the owner and approved by the city council. The city council may establish a reasonable period of time for the owner to replace the demolished structure.

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

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

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law on the date it was ratified.

H.B. 1630 **Session Law 2005-144**

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 2005; EXTENDING THE FINAL MATURITY OF CERTAIN GLOBAL TRANSPARK DEBT FROM JULY 1, 2005, UNTIL JULY 31, 2005; EXTENDING THE SUNSET ON RETIRED TEACHERS RETURNING TO THE CLASSROOM UNTIL JULY 31, 2007; CONFORMING THE STATE

ESTATE TAX TO THE FEDERAL ESTATE TAX SUNSET; AND EXTENDING THE SUNSET ON THE ADDITIONAL ONE-HALF CENT STATE SALES AND USE TAX FROM JULY 1, 2005, UNTIL THE 2005 APPROPRIATIONS ACT BECOMES LAW.

The General Assembly of North Carolina enacts:

PART I. BUDGET CONTINUATION

SECTION 1. The Director of the Budget may continue to allot funds for expenditure by State departments, institutions, and agencies at a level not to exceed the level of recurring expenditures authorized in S.L. 2004-124, as amended.

The Director of the Budget shall not allocate funds for any of the purposes set out in the budget reductions contained in Senate Bill 622, fourth edition, and Senate Bill 622, seventh edition, that are not in controversy.

Vacant positions subject to the proposed budget reductions in either Senate Bill 622, fourth edition, or Senate Bill 622, seventh edition, shall not be filled.

To the extent necessary to implement this authorization, there is appropriated from the appropriate State funds and cash balances, federal receipts, and departmental receipts for the 2005-2006 fiscal year funds necessary to carry out this section.

The appropriations and the authorizations to allocate and spend funds which are set out in this section shall remain in effect until the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law, at which time that act shall become effective and shall govern appropriations and expenditures. When the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law, the Director of the Budget shall adjust allotments to give effect to that act from July 1, 2005.

Except as otherwise provided by this act, the limitations and directions for the 2004-2005 fiscal year set out in S.L. 2003-284, as amended, and in S.L. 2004-124, as amended, remain in effect. Session laws that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

PART II. FEDERAL BLOCK GRANTS

SECTION 2. The Director of the Budget shall continue to allocate federal block grant funds at the levels provided in Sections 5.1 and 5.2 of S.L. 2004-124 and as otherwise provided by law, and appropriations from federal block grants are hereby made.

PART III. NO AUTOMATIC STEP INCREASE FOR STATE AND PUBLIC SCHOOL EMPLOYEES

SECTION 3. State employees subject to G.S. 7A-102(c), 7A-171.1, or 20-187.3 shall not move up on salary schedules or receive automatic increases, including automatic step increases, until authorized by the General Assembly.

Public school employees paid on the teacher salary schedule or the school-based administrator salary schedule shall not move up on salary schedules or receive automatic step increases until authorized by the General Assembly.

PART IV. SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 4.(a) The State's employer contribution rates budgeted for retirement and related benefits for the 2005-2006 fiscal year shall remain the same as they are on June 30, 2005.

SECTION 4.(b) The State's employer contribution rates established by this section are effective only until this section expires and are subject to revision in the Current Operations and Capital Improvements Appropriations Act of 2005. If the Current Operations and Capital Improvements Appropriations Act of 2005 modifies these rates, the Director of the Budget shall further modify the rates set in that act for the remainder of the 2005-2006 fiscal year so as to compensate for the different amount contributed between July 1, 2005, and the date the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law so that the effective rates for the entire year reflect the rates set in the Current Operations and Capital Improvements Appropriations Act of 2005.

PART V. FUNDS SHALL NOT REVERT

SECTION 5.(a) If the provisions of either Senate Bill 622, fourth edition, or Senate Bill 622, seventh edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 2005. Unless these funds are encumbered on or before June 30, 2005, these funds shall not be expended after June 30, 2005, except as provided by a law enacted after June 30, 2005.

SECTION 5.(b) This section becomes effective June 30, 2005.

PART VI. STATE CONTROLLER SHALL NOT TRANSFER FUNDS ON JUNE 30

SECTION 6.(a) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2004-2005 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005.

SECTION 6.(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2004-2005 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2005.

SECTION 6.(c) This section becomes effective June 30, 2005.

PART VII. MODIFY GLOBAL TRANSPARK DEBT

SECTION 7. G.S. 147-69.2(b)(11) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

…

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than ~~July 1, 2005.~~ July 31, 2005. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this

subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss."

PART VII-A. EXTEND THE SUNSET ON RETIRED TEACHERS RETURNING TO THE CLASSROOM

SECTION 7A.1. Subsection (d) of Section 28.24 of S.L. 1998-212, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"(d) This section becomes effective January 1, 1999, and expires June 30, ~~2005.~~ 2007."

SECTION 7A.2. The introductory language of Section 67 of S.L. 1998-217, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"**SECTION 67.** Effective January 1, 1999, through June 30, ~~2005,~~ 2007, G.S. 135-3(8)c., as rewritten by Section 28.24(a) of S.L. 1998-212 reads as rewritten:".

SECTION 7A.3. Subsection (b) of Section 67.1 of S.L. 1998-217, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"(b) This section becomes effective January 1, 1999, and expires June 30, ~~2005.~~ 2007."

SECTION 7A.4. Subsection (c) of Section 32.25 of S.L. 2001-424, as amended by Section 31.18A of S.L. 2004-124, reads as rewritten:

"**SECTION 32.25.(c)** This section becomes effective July 1, 2001, and expires June 30, ~~2005.~~ 2007."

SECTION 7A.5. This part becomes effective June 30, 2005.

PART VIII. CONFORM ESTATE TAX TO FEDERAL SUNSET

SECTION 8.1. Section 30C.3(b) of S.L. 2002-126, as amended by Section 37A.4 of S.L. 2003-284 and Section 1 of S.L. 2004-170, reads as rewritten:

"**SECTION 30C.3.(b)** This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. ~~This section and Section 37A.5 of S.L. 2003-284 are repealed effective for the estates of decedents dying on or after July 1, 2005.~~"

SECTION 8.2. Section 4(b) of S.L. 2004-170 is repealed.

SECTION 8.3. This part is effective when it becomes law.

PART IX. EXTEND SUNSET ON ADDITIONAL ONE-HALF CENT STATE SALES AND USE TAX RATE

SECTION 9.1. Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made ~~on or~~ after ~~July 1, 2005.~~the date that Senate Bill 622, 2005 Regular Session, the 2005 Appropriations Act, becomes law. In no event is the tax extended beyond December 31, 2005. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 9.2. This part is effective when it becomes law.

PART X. EFFECTIVE DATE

SECTION 10. Except as otherwise provided, Parts I through VI of this act become effective July 1, 2005, and expire July 20, 2005. Except as otherwise provided, the remainder of this act becomes effective June 30, 2005.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 2:49 p.m. on the 30th day of June, 2005.

H.B. 822 Session Law 2005-145

AN ACT TO AMEND STATE LAW REGARDING THE DETERMINATION OF AGGRAVATING FACTORS IN A CRIMINAL CASE TO CONFORM WITH THE UNITED STATES SUPREME COURT DECISION IN BLAKELY V. WASHINGTON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16 reads as rewritten:

"§ **15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving ~~by a preponderance of the evidence~~ beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a

jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection (d) of this section or a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the State seeks to establish.

(b) When Aggravated or Mitigated Sentence Allowed. – If the ~~court~~ jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, ~~it~~ the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If ~~the court finds that~~ aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or

assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:

(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

(2) The defendant was a passive participant or played a minor role in the commission of the offense.

(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.

(5) The defendant has made substantial or full restitution to the victim.

(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.

(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.

(10) The defendant reasonably believed that the defendant's conduct was legal.

(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.

(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.

(13) The defendant is a minor and has reliable supervision available.

(14) The defendant has been honorably discharged from the United States armed services.
(15) The defendant has accepted responsibility for the defendant's criminal conduct.
(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
(17) The defendant supports the defendant's family.
(18) The defendant has a support system in the community.
(19) The defendant has a positive employment history or is gainfully employed.
(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
(21) Any other mitigating factor reasonably related to the purposes of sentences."

SECTION 2. G.S. 15A-1340.14 reads as rewritten:

"§ **15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.
(1a) For each prior felony Class B1 conviction, 9 points.
(2) For each prior felony Class B2, C, or D conviction, 6 points.
(3) For each prior felony Class E, F, or G conviction, 4 points.
(4) For each prior felony Class H or I conviction, 2 points.
(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.
(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.
(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of

this subsection. The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – 0 points.
(2) Level II – At least 1, but not more than 4 points.
(3) Level III – At least 5, but not more than 8 points.
(4) Level IV – At least 9, but not more than 14 points.
(5) Level V – At least 15, but not more than 18 points.
(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.
(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as

that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

SECTION 3. G.S. 15A-924(a) is amended by adding a new subdivision to read:

"(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision."

SECTION 4. Article 58 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.**

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and

(2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate."

SECTION 5. This act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 21st day of June, 2005.

Became law upon approval of the Governor at 2:50 p.m. on the 30th day of June, 2005.

H.B. 97 **Session Law 2005-146**

AN ACT TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO MURDERS THE OTHER PARENT OF THE CHILD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1111(a)(8) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

…

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; ~~or~~ has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the ~~home.~~home; or has committed murder or voluntary manslaughter of the other parent of the child. The petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was by way of a jury verdict or any kind of ~~plea.~~ plea. If the parent has committed the murder or voluntary manslaughter of the other parent of the child, the court shall consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification.

…."

SECTION 2. This act is effective when it becomes law and applies to termination of parental rights proceedings filed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 2005.

Became law upon approval of the Governor at 2:51 p.m. on the 30th day of June, 2005.

S.B. 88 **Session Law 2005-147**

AN ACT REPEALING THE APPLICABILITY OF CERTAIN MOTOR VEHICLE LAWS ON PROPERTIES OWNED OR UNDER THE CONTROL OF THE BENT TREE PLANTATION HOMEOWNERS ASSOCIATION IN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2002-128 reads as rewritten:

"**SECTION 1.** The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Sanders Forest Development Association, Inc., or ~~its members and the Bent Tree Plantation Homeowners Association, Inc., or~~ its members. For purposes of this act,

streets, roadways, and alleys in the Sanders Forest ~~and Bent Tree Plantation communities~~ community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws."

SECTION 2. Section 2 of S.L. 2002-128 reads as rewritten:

"**SECTION 2.** This act shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Sanders Forest Development Association, Inc., ~~and the Bent Tree Plantation Homeowners Association, Inc., or its members~~ as is now vested by law in that association or its members. The speed limits within the Sanders Forest ~~and Bent Tree Plantation communities~~ community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Brunswick County Board of Commissioners. Pursuant to G.S. 20-141, the Brunswick County Board of Commissioners may authorize by ordinance higher or lower speeds."

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

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law on the date it was ratified.

S.B. 689 **Session Law 2005-148**

AN ACT TO CLARIFY THAT THE CLERK OF SUPERIOR COURT IS RESPONSIBLE FOR PROVIDING COPIES OF THE TRIAL FILE TO APPOINTED APPELLATE COUNSEL IN INDIGENT CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-452 is amended by adding a new subsection to read:

"(e) In cases in which an indigent person has entered notice of appeal and appellate counsel has been appointed by the Office of Indigent Defense Services, the clerk of superior court shall make a copy of the complete trial division file in the case, make a copy of documentary exhibits upon request, and furnish those files and any requested documentary exhibits to the appointed attorney."

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

In the General Assembly read three times and ratified this the 27th day of June, 2005.

Became law upon approval of the Governor at 6:49 p.m. on the 5th day of July, 2005.

S.B. 321 **Session Law 2005-149**

AN ACT TO ALLOW PERSONS SEVENTY-TWO AND OLDER REQUESTING TO BE EXCUSED FROM JURY DUTY TO REQUEST AN EXEMPTION FROM JURY SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-6.1 reads as rewritten:

"§ **9-6.1. ~~Excuses on account of age.~~Requests to be excused.**

Any person summoned as a juror who is ~~65~~72 years or older ~~may establish his exemption~~ and who wishes to be excused, deferred, or exempted may make the request without appearing in person by filing a signed statement of the ground of ~~his~~ the ~~exemption~~ request with the chief district court judge of that district, or the district court judge or trial court administrator designated by ~~him~~ the chief district court judge pursuant to G.S. ~~9-6(b)~~ 9-6(b), at anytime five days before the date upon which ~~he~~ the person is summoned to appear. A person may request either a temporary or permanent exemption under this section, and the judge or trial court administrator may accept or reject either in the exercise of discretion conferred by G.S. 9-6(b), including the substitution of a temporary exemption for a requested permanent exemption. In the case of supplemental jurors summoned under G.S. 9-11, ~~such~~ notice may be given when summoned. In case the chief district court judge, or the judge or trial court administrator designated by ~~him~~ the chief district court judge pursuant to G.S. 9-6(b), ~~shall reject~~ rejects the request for exemption, the prospective juror shall be immediately notified by the trial court administrator or the clerk of court by telephone, letter, or personally."

SECTION 2. This act becomes effective October 1, 2005, and applies to persons summoned for jury service on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 2005.

Became law upon approval of the Governor at 6:50 p.m. on the 5th day of July, 2005.

S.B. 512 **Session Law 2005-150**

AN ACT TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER OR SEWER SERVICES UPON AGREEING TO BE SUPPLIED WITH ELECTRICITY, TO PRESERVE THE CORRIDOR SERVICE RIGHTS OF ELECTRIC SUPPLIERS OUTSIDE CITIES FROM BEING LOST OR DILUTED DUE TO EXTRATERRITORIAL SERVICES BY CITIES, AND TO ADDRESS OTHER ELECTRIC TERRITORY ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-39. Conditioning services on electric service prohibited.**

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance, or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay, or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1."

SECTION 2. G.S. 160A-331 reads as rewritten:

"§ **160A-331. Definitions.**

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

…

(2) "Line" means any conductor located inside the ~~city~~ city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, ~~other than~~except as follows:

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such ~~premises, and~~premises.

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

…

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a ~~city~~ city, or that has a conductor located within 300 feet of an area annexed by a city that is ~~but is not~~ a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

SECTION 3. Part 2 of Article 16 of Chapter 160A of the General Statutes is amended by adding new sections to read:

"**§ 160A-331.1. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, a city shall not construct or extend an electric distribution line outside of its corporate limits as of June 1, 2005, in territory assigned to an electric membership corporation by the North Carolina Utilities Commission without the written consent of the electric membership corporation. Provided, however, that the consent of an electric membership corporation shall not be required in connection with the proposed construction of an electric distribution line solely to serve a facility owned by a city. The electric membership corporation shall give its consent unless the electric membership corporation, in good faith, believes that the construction of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of the electric distribution line in the proposed

location is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the electric membership corporation to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of G.S. 7A-38.3B.

"**§ 160A-331.2. Agreements of electric suppliers.**

(a) The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries, or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city.

(b) During the period beginning June 1, 2005, and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of June 1, 2005, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric services may be provided by such electric suppliers. To the extent such negotiations produce any agreements between the affected electric suppliers, such agreements shall be submitted to the North Carolina Utilities Commission for approval under this section. To the extent such negotiations do not produce an agreement and disputes among the suppliers remain as of May 31, 2007, such disputes shall be resolved pursuant to the provisions of G.S. 7A-38.3B(i)."

SECTION 4. G.S. 160A-332(a) is amended by adding a new subdivision to read:

"(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier for the premises, shall not have the right to serve those premises."

SECTION 5. G.S. 160A-332 is amended by adding a new subsection to read:

"(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute

that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within 30 days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees."

SECTION 6. G.S. 117-10.2 reads as rewritten:

"§ **117-10.2. Restriction on municipal service.**

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.1, 160A-331.2, 160A-332, and 160A-333. ~~An~~ In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

SECTION 7. Article 2 of Chapter 117 of the General Statutes is amended by adding a new section to read:

"**§ 117-10.3. Construction of lines between June 1, 2005, and May 31, 2007.**

During the period beginning June 1, 2005, and ending May 31, 2007, an electric membership corporation shall not construct or extend an electric distribution line in territory assigned to it by the North Carolina Utilities Commission without the written consent of the municipality that owns and maintains its own electric system whose corporate limits, as of June 1, 2005, are within three miles of any part of the line or extension proposed to be constructed by the electric membership corporation. The municipality shall give its consent unless the municipality, in good faith, believes that the construction or extension of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of that part of the electric distribution line in the proposed location within three miles of the city is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the municipality to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of G.S. 7A-38.3B."

SECTION 8. Article 5 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-38.3B. Prelitigation mediation of territorial disputes.**

(a) Purpose. – The General Assembly finds that a system of mediated settlement conferences should be established to facilitate the settlement of territorial disputes between certain electric suppliers. Therefore, this section is enacted to require those electric suppliers and their representatives to participate in mediation conducted in

accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections.

(b) Definitions. – As used in this section, the following terms mean:

(1) Electric supplier. – Any electric membership corporation, or any municipality that owns, operates, and maintains its own electric system.

(2) Mediated settlement conference. – A conference of electric suppliers and their representatives conducted by a mediator.

(3) Mediation. – An informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a territorial dispute. A mediator does not make an award or render a judgment as to the merits of the action.

(5) Territorial dispute. – A disagreement between electric providers over (i) the right to serve premises located in areas outside of or within municipal limits, (ii) the failure of a municipality to give its written consent to the construction of an electric distribution line by an electric membership corporation pursuant to the provisions of G.S. 117-10.3, or (iii) the failure of an electric membership corporation to give its written consent to the construction of an electric distribution line by a municipality pursuant to the provisions of G.S. 160A-331.1.

(c) Voluntary Mediation. – The parties to a territorial dispute may agree at any time to mediation of the dispute under the provisions of this section.

(d) Mandatory Mediation. – In lieu of commencing a civil action involving a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1, an electric supplier shall initiate mediation pursuant to this section. If an electric supplier brings an action involving such a territorial dispute, that action shall, upon motion of any party prior to trial, be dismissed without prejudice by the court.

(e) Initiation of Mediation. – Mediation of a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1 shall be initiated by filing a request for mediation with the clerk of superior court in a county in which a civil action between the electric suppliers could have been brought. The filing of such a request for mediation shall commence a special proceeding in the superior court. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(f) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the applicable provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections, as supplemented and modified by this section. The Supreme Court may adopt additional rules and standards to implement this section.

(g) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs

shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting. In the event the parties waive mediation, then they shall proceed as provided in subsection (i) of this section.

(h) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (g) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section. If an agreement is not reached at the mediation, the parties shall proceed under subsection (i) of this section. If an agreement is reached at the mediation, the parties shall reduce its terms to writing and shall sign it. A proposed consent order incorporating the signed agreement shall be filed with the court within 14 days after the agreement is signed, and such order shall be entered by the court. Subject to the provisions of subsection (k) of this section, the signed agreement and consent order shall be binding on the parties and shall conclude the special proceeding.

(i) Binding Decision. – If an agreement was not reached as a result of mediation or if mediation is waived pursuant to subsection (g) of this section, the electric suppliers shall submit their territorial dispute to a member of the Public Staff of the North Carolina Utilities Commission who shall have the authority to issue an opinion resolving the territorial dispute that is binding on the parties. If the parties do not agree on the selection of a member of the Public Staff, the Executive Director of the Public Staff shall appoint a member of the Public Staff to hear the territorial dispute and render an opinion. The opinion resolving the dispute shall be considered in the nature of an arbitrator's award and may be enforced in the same manner as an arbitration award under G.S. 1-569.25.

(j) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a territorial dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section.

(k) Agreements Approved. – Any agreement reached as a result of mediation pursuant to this section that involves or relates to an electric supplier subject to the territorial jurisdiction of the North Carolina Utilities Commission shall be subject to the approval of the Commission under G.S. 160A-331.2."

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 6:51 p.m. on the 5th day of July, 2005.

S.B. 821 **Session Law 2005-151**

AN ACT PERMITTING THE ROUTING OF SCHOOL BUSES ON CERTAIN STREETS DESIGNATED AS PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-246(b) reads as rewritten:

"(b) Unless road or other conditions ~~shall~~ make it ~~inadvisable to do so,~~ inadvisable, public school buses shall be ~~so~~ routed on state-maintained ~~highways~~ highways, municipal streets, or other streets with publicly dedicated right-of-way. ~~that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one half miles or more from the school to which such pupil is assigned.~~The local board of education shall not be responsible for damage to the roadway. Each public school bus shall be routed so that the bus passes within one mile of the residence of each pupil assigned to that bus. A pupil who lives one and one-half miles or more from the school to which the pupil is assigned shall be eligible for school bus transportation."

SECTION 2. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 6:52 p.m. on the 5th day of July, 2005.

H.B. 355 **Session Law 2005-152**

AN ACT TO RESTRICT THE USE OF RED AND BLUE LIGHTS ON VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-130.1 reads as rewritten:

"§ **20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;
(2) A highway patrol car;
(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;
(4) An ambulance;
(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for transplantation;
(6) A fire-fighting vehicle;
(7) A school bus;

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;

(10) A vehicle operated by medical doctors or anesthetists in emergencies;

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle;

(13) A light required by the Federal Highway Administration;

(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation;

(15) A vehicle operated by an emergency medical service as an emergency support vehicle; and

(16) A State emergency management vehicle.

(c) It is unlawful for any person to possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this State, except for a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. As used in this subsection, unless the context requires otherwise, "blue light" means <u>any forward facing blue light installed on a vehicle after initial manufacture of the vehicle; or</u> an operable blue light which:

(1) Is not (i) being installed on, held in inventory for the purpose of being installed on, or held in inventory for the purpose of sale for installation on a vehicle on which it may be lawfully operated or (ii) installed on a vehicle which is used solely for the purpose of demonstrating the blue light for sale to law enforcement personnel;

(1a) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(d) Repealed by Session Laws 1999-249, s. 1.

(e) Violation of subsection (a) or (c) of this section is a Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 6:55 p.m. on the 5th day of July, 2005.

H.B. 371 **Session Law 2005-153**

AN ACT DESIGNATING THE UNIVERSITY OF NORTH CAROLINA AT PEMBROKE AS NORTH CAROLINA'S HISTORICALLY AMERICAN INDIAN UNIVERSITY.

Whereas, the University of North Carolina at Pembroke was originally established in 1887 as Croatan Normal School in response to a petition from the American Indian people in the Robeson County area; and

Whereas, the General Assembly changed the name in 1911 to the Indian Normal School of Robeson County and again in 1913 to the Cherokee Indian Normal School of Robeson County; and

Whereas, in 1926, the Board of Trustees added a two-year normal program beyond high school, and phased out elementary education; and

Whereas, the first 10 diplomas were awarded in 1928, when the State accredited the school as a "standard normal school", and additional college courses were later added with the first college degrees conferred in 1940; and

Whereas, in 1941, the General Assembly changed the name to Pembroke State College for Indians, and the school's curricula further expanded; and

Whereas, in 1945, enrollment was further expanded to include American Indians from other tribes, and in 1949 the name was shortened to Pembroke State College; and

Whereas, in the wake of the 1950s and 1960s civil rights and school desegregation laws, the General Assembly changed the name in 1969 to Pembroke State University and made the school a regional university; and

Whereas, three years later, in 1972, the General Assembly established the 16-campus University of North Carolina System, with Pembroke State University as one of its constituent institutions; and

Whereas, on July 1, 1996, Pembroke State University officially became the University of North Carolina at Pembroke; and

Whereas, The University of North Carolina System currently consists of 16 university campuses, five of which are designated as Historically Black Colleges and Universities, but the University of North Carolina at Pembroke has never been officially acknowledged as a Historically American Indian University; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The University of North Carolina at Pembroke is officially designated as North Carolina's Historically American Indian University.

SECTION 2. G.S. 116-13.1(b) reads as rewritten:

"(b) Equity in University Improvements. – The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and North Carolina's Historically American Indian University, the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining

inequities found, including recommendations as to how those inequities should be addressed."

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

In the General Assembly read three times and ratified this the 27th day of June, 2005.

Became law upon approval of the Governor at 6:55 p.m. on the 5th day of July, 2005.

H.B. 403 **Session Law 2005-154**

AN ACT TO AMEND THE LAW REGARDING THE PURCHASE OF THE PRELIMINARY SCHOLASTIC APTITUDE TEST (PSAT) FOR THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-174.18 reads as rewritten:

"§ **115C-174.18. Opportunity to take Preliminary Scholastic Aptitude Test.**

Every student in the eighth through tenth grades who has completed Algebra I or who is in the last month of Algebra I shall be given an opportunity to take a version of the Preliminary Scholastic Aptitude Test (PSAT) one time at State expense. ~~The State Board of Education shall contract with the College Board for the tests and for comprehensive diagnostic information to accompany PSAT score reports.~~"

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

In the General Assembly read three times and ratified this the 27th day of June, 2005.

Became law upon approval of the Governor at 6:57 p.m. on the 5th day of July, 2005.

H.B. 404 **Session Law 2005-155**

AN ACT TO REPEAL A DUPLICATIVE SCHOOL ACCREDITATION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12(9)c. reads as rewritten:

"§ **115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

. . .

(9) Miscellaneous Powers and Duties. – All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

. . .

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental

basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program.

~~The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.~~

~~The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.~~"

SECTION 2. G.S. 115C-81(a3) reads as rewritten:

"§ **115C-81. Basic Education Program.**

. . .

(a3) Alcohol and Drug Education Program to Be Recommended and Implemented:

(1) A comprehensive education program that includes alcohol and drug use prevention education must be available to every child in North Carolina schools in kindergarten through high school.

(2) The State Board of Education shall develop and maintain a recommended list of alcohol and drug use prevention education materials that include components for teacher training and ongoing assessment and evaluation to verify success and ensure the use of up-to-date information and strategies.

(3) The Department of Public Instruction will work to strengthen instructional offerings in the content and skill areas of the Basic Education Program in which alcohol and drug use prevention education is addressed. Curricular materials and resources will be developed that meet, extend, and supplement drug and alcohol education as outlined in the North Carolina Standard Course of Study and the Teacher Handbook for the competency-based curriculum.

(4) The Department of Public Instruction shall recommend to the State Board of Education any drug use prevention education support materials that should be removed or added to the recommended list of curricular resources developed and maintained by the State Board of Education.

(5) Local boards of education may select supplemental alcohol and drug use prevention education materials from the list maintained by the State Board of Education, or develop their own supplemental materials to be approved by the State Board of Education.

(6) Local boards of education shall implement alcohol and drug use prevention education as a primary part of their comprehensive health education program.

(7) Local boards of education will provide for ongoing evaluation of drug use prevention education resources, to include participation in on-going evaluations with the Department of Public Instruction.

(8) Local boards of education must implement an approved drug and alcohol education prevention program for kindergarten through sixth grade by the 1990-91 school year, and for seventh grade through twelfth grade by the 1991-92 school year.

~~(9) Local boards of education will meet educational State accreditation standards related to instruction in preventing alcohol and drug use in grades K-12.~~

(10) The Department of Public Instruction, in conjunction with local school districts, will provide for staff development to train educators and support personnel to implement a comprehensive alcohol and drug use prevention education program.

(11) Sequential, age-appropriate instruction will be provided that has the following features:

a. Reaches all students in all grades;

b. Presents a clear and consistent message that the use of alcohol and illicit drugs and the misuse of other drugs is unhealthy and harmful;

c. Reflects current research and theory;

d. Includes all abusable substances;

e. Utilizes information that is current and accurate;

f. Involves students in active "hands-on" learning experiences;

g. Integrates substance abuse education with other health and social issues and other subject and skill areas of the North Carolina Basic Education Program and Standard Course of Study;

h. Promotes understanding and respect for the law and values of society;

i. Encourages health, safe, and responsible attitudes and behaviors;

j. Includes strategies to involve parents, family members, and the community;

k. Includes information on intervention and treatment services;

l. Is continually open to revision, expansion and improvement."

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

In the General Assembly read three times and ratified this the 27th day of June, 2005.

Became law upon approval of the Governor at 7:00 p.m. on the 5th day of July, 2005.

H.B. 740 **Session Law 2005-156**

AN ACT TO REQUIRE PUBLIC TRANSIT OPERATORS AND OTHER EMPLOYERS OF PERSONS WHO OPERATE COMMERCIAL MOTOR

VEHICLES WHO ARE SUBJECT TO FEDERAL DRUG AND ALCOHOL TESTING TO REPORT TO THE DIVISION OF MOTOR VEHICLES ANY FEDERALLY REQUIRED POSITIVE DRUG AND ALCOHOL TEST RESULT, AND TO DISQUALIFY THOSE PERSONS FROM OPERATING A COMMERCIAL MOTOR VEHICLE OR OTHER PUBLIC TRANSIT VEHICLES UNTIL SUCCESSFUL COMPLETION OF TREATMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-37.19 reads as rewritten:

"§ **20-37.19. Employer responsibilities.**

(a) Each employer shall require the applicant to provide the information specified in G.S. 20-37.18(c).

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or is subject to an out-of-service order in any state; or

(2) In which the driver has more than one driver license.

(c) The employer of any employee who tests positive in a drug or alcohol test required under 49 C.F.R. Part 382 and 49 C.F.R. Part 655 shall notify the Division of Motor Vehicles in writing within five business days following the employer's receipt of confirmation of a positive drug test. The notification shall include the driver's name, address, drivers license number, social security number, and results of the drug or alcohol test."

SECTION 2. G.S. 20-17.4 is amended by adding a new subsection to read:

"(l) Disqualification for Testing Positive in a Drug or Alcohol Test. – Upon receipt of notice of a positive drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division shall disqualify a driver from operating a commercial motor vehicle until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503."

SECTION 3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-37.20A. Driving record notation for testing positive in a drug or alcohol test.**

Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol or drug test of a person holding a commercial drivers license, and subject to any appeal of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on the driving record of the driver. A notation of a disqualification pursuant to G.S. 20-17.4(l) shall be retained on the record of a person for a period of two years following the end of any disqualification of that person."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-37.20B. Appeal of disqualification for testing positive in a drug or alcohol test.**

Following receipt of notice pursuant to G.S. 20-37.19(c) of a positive test in an alcohol or drug test, the Division shall notify the driver of the pending disqualification of the driver to operate a commercial vehicle and the driver's right to a hearing if requested within 20 days of the date of the notice. If the Division receives no request for

a hearing, the disqualification shall become effective at the end of the 20-day period. If the driver requests a hearing, the disqualification shall be stayed pending outcome of the hearing. The hearing shall take place at the offices of the Division of Motor Vehicles in Raleigh. The hearing shall be limited to issues of testing procedure and protocol. A copy of a positive test result accompanied by certification by the testing officer of the accuracy of the laboratory protocols that resulted in the test result shall be prima facie evidence of a confirmed positive test result. The decision of the Division hearing officer may be appealed in accordance with the procedure of G.S. 20-19(c6)."

SECTION 5. This act becomes effective December 1, 2005.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 7:01 p.m. on the 5th day of July, 2005.

S.B. 392 **Session Law 2005-157**

AN ACT AMENDING THE CHARTER OF THE CITY OF RALEIGH TO ALLOW THE CITY TO SELL PERSONAL UNIFORMS AND EQUIPMENT TO PUBLIC SAFETY EMPLOYEES UPON THE EMPLOYEES LEAVING THE CITY'S EMPLOYMENT AND AS IT RELATES TO CERTAIN PURCHASES AND LEASES OF REAL PROPERTY BY CITY EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 33(b) of the Charter of the City of Raleigh, being Chapter 1184 of the 1949 Session Laws, as amended by S.L. 1991-312, S.L. 1993-649, and S.L. 1995-323, reads as rewritten:

"(b) Notwithstanding the provisions of subsection (a), nothing herein shall be construed as preventing any official or employee covered by this section from purchasing a plot or plots from the city in a city-owned cemetery, nor shall any such official or employee be prohibited from participating in any rental or home ownership program sponsored or operated by the city, so long as the official or employee meets all the criteria for the program and so long as the income of the recipient does not exceed ~~sixty-five percent (65%)~~ eighty percent (80%) of the median area income based on household size. Participants in such a program must commit to occupying the unit acquired or rented as their personal dwelling and must commit to reside there at least three years unless prevented from doing so by extraordinary circumstances such as divorce, transfer of job, or death. The award of any such housing assistance to an employee shall be noted in the minutes of the City Council. Furthermore, notwithstanding the provisions of subsection (a) of this section or any other law or ordinance, the city may establish a program in which sworn law enforcement officers may purchase or lease city-owned houses at or below market rates for their personal residences if the City Council first determines that certain geographical areas of the city would benefit from an increased visible police presence. Any such sales or leases are determined by the General Assembly to be for a public purpose. The City Council shall attach any conditions or restrictions to such sales or leases as it deems necessary to protect the integrity of the program and the law enforcement process."

SECTION 2. Section 33(c) of the Charter of the City of Raleigh, being Chapter 1184 of the 1949 Session Laws, as amended by S.L. 1991-312, S.L. 1993-649, and S.L. 1995-323, reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, nothing herein shall be construed as preventing any official or employee covered by this section from purchasing a utility service offered to the general public at uniform rates, sludge generated at a wastewater treatment plant, farm products grown on City-owned or City-leased farms, and mulch produced at the City's yard waste processing center. In addition to the transactions authorized in this section, the City may sell items of personal uniforms and equipment, excluding weapons, to public safety employees upon their separation from the City's employment. The items may be sold by private sale at the prices and under the terms and conditions that the City Council may establish by resolution."

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

In the General Assembly read three times and ratified this the 6th day of July, 2005.

Became law on the date it was ratified.

S.B. 463 **Session Law 2005-158**

AN ACT REPEALING THE SUNSET PROVISION RELATING TO MECKLENBURG COUNTY'S AUTHORITY TO SELL CERTAIN REAL PROPERTY BY PRIVATE NEGOTIATED SALE AND TO MAKE THE AUTHORITY APPLY TO ADDITIONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2003-49 reads as rewritten:

"**SECTION 2.** This act becomes effective July 1, ~~2002, and expires June 30, 2005.~~2002."

SECTION 2. Section 2 of S.L. 2000-65, as reenacted by Section 1 of S.L. 2003-49, reads as rewritten:

"**Section 2**. This act shall apply to Mecklenburg County only and only with respect to the following parcels of land, all of which are owned by Mecklenburg ~~County as of the date of adoption of this act and all of which have~~ County: (i) parcels with frontage on North College ~~Street:~~ Street that are Mecklenburg County Tax Parcels (as of January 1, 2000) 080-031-01, 080-032-04, 080-032-05, 080-041-01, and ~~080-041-02.~~ 080-041-02; (ii) Mecklenburg County Tax Parcels (as of January 1, 2005) 073-161-01, 073-161-03, 073-161-06, 073-162-02, and 073-162-01; (iii) that portion of Mecklenburg County Tax Parcel 073-161-04 (as of January 1, 2005) which is immediately adjacent to and parallel to West Second Street, approximately 100 feet wide and running from South Mint Street to South Graham Street; (iv) that portion of Mecklenburg County Tax Parcel 073-112-05 (as of January 1, 2005) which is occupied by and including the old Virginia Paper Company Building, and such areas immediately adjacent to the old Virginia Paper Company Building as might be necessary for ingress, egress, and regress to and from said Building and such other areas immediately adjacent to said Building as might be necessary for uses such as outdoor patios or terraces, or other outdoor uses which are compatible with and accessory to the interior uses of the adaptive re-use of the old Virginia Paper Company Building; and (v) subsurface portions of Mecklenburg County Tax Parcels 073-111-04 and 073-112-05 (as of January 1, 2005) for parking uses."

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

In the General Assembly read three times and ratified this the 6th day of July, 2005.

Became law on the date it was ratified.

H.B. 1102 **Session Law 2005-159**

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO COUNT ONE-STOP BALLOTS AT THE SAME TIME AS OTHER ABSENTEE BALLOTS AND TO ALLOW THOSE BOARDS TO TAKE PREPARATORY STEPS FOR COUNTING ONE-STOP AND OTHER ABSENTEE VOTES EARLIER THAN TWO O'CLOCK P.M.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234(2) reads as rewritten:

"(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ~~ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box.~~ ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting

units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m."

SECTION 2. This act is effective when it becomes law and applies to all elections held on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 11:43 a.m. on the 7th day of July, 2005.

H.B. 1503 **Session Law 2005-160**

AN ACT TO PROVIDE THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES ARE TREATED AS CITIES FOR PURPOSES OF CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-627. Civil liability.**

Except as provided in G.S. 160A-626, the Authority shall be deemed a city for purposes of civil liability pursuant to G.S. 160A-485. Governmental immunity of the Authority is waived to a minimum of twenty million dollars ($20,000,000) per single accident or incident. The Authority shall maintain a minimum of twenty million dollars ($20,000,000) per single accident or incident of liability insurance. Participation in a local government risk pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purpose of this section."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 11:46 a.m. on the 7th day of July, 2005.

H.B. 702 **Session Law 2005-161**

AN ACT TO INCREASE THE MINIMUM AGE FOR PERSONS WHO MAY OPERATE PERSONAL WATERCRAFT IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-13.3(b) reads as rewritten:

"(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least ~~12~~ 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency."

SECTION 2. This act becomes effective November 1, 2005. The age requirement of 14 years of age in this act does not apply to persons who are 12 years of age or older prior to November 1, 2005.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 11:48 a.m. on the 7th day of July, 2005.

H.B. 1168 **Session Law 2005-162**

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"§ **53-127. Unlawful use of terms indicating that business is bank or trust ~~company.~~company; unauthorized use of name of banking entity.**

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

(1) Banking. – The business of receiving or soliciting money on deposit.

(2) Banking entity. – A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. – A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

(1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not

a bank or trust company and is not engaged in the banking or trust business.

(2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.

(3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.

(4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars ($500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any financial product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 11:49 a.m. on the 7th day of July, 2005.

H.B. 514 **Session Law 2005-163**

AN ACT TO PROVIDE THAT ANY MOTION FILED IN A CIVIL ACTION WHEN THE ACTION IS PENDING IN A SUPERIOR COURT OF A COUNTY THAT IS IN A SUPERIOR COURT DISTRICT CONSISTING OF MORE THAN ONE COUNTY MAY BE HEARD IN ANY SUPERIOR COURT IN THAT SUPERIOR COURT DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 7, reads as rewritten:

"**Rule 7. Pleadings allowed; ~~form of~~ motions.**

(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is

summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. If the answer alleges contributory negligence, a party may serve a reply alleging last clear chance. No other pleading shall be allowed except that the court may order a reply to an answer or a third-party answer.

(b) Motions and other papers. –

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b).

(4) A motion in a civil action filed with the superior court clerk of a county that is in a superior court district consisting of more than one county or parts of more than one county may be heard in any county in that superior court district. The motion may be heard at a regular civil or civil priority session of court or, with the consent of the presiding judge, at a regular criminal or criminal priority session of court. A party shall not object to the hearing of the motion outside the county with whose superior court clerk the action was filed if the motion is heard within the superior court district where the action is pending.

(c) Demurrers, pleas, etc., abolished. – Demurrers, pleas, and exceptions for insufficiency shall not be used.

(d) Pleadings not read to jury. – Unless otherwise ordered by the judge, pleadings shall not be read to the jury."

SECTION 2. G.S. 1A-1, Rule 58, reads as rewritten:

"**Rule 58. Entry of judgment.**

Subject to the provisions of Rule 54(b), a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court. The party designated by the judge or, if the judge does not otherwise designate, the party who prepares the judgment, shall serve a copy of the judgment upon all other parties within three days after the judgment is entered. Service and proof of service shall be in accordance with Rule 5. If service is by mail, three days shall be added to the time periods prescribed by Rule 50(b), Rule 52(b), and Rule 59. All time periods within which a party may further act pursuant to Rule 50(b), Rule 52(b), or Rule 59 shall be tolled for the duration of any period of noncompliance with this service requirement, provided however that no time period under Rule 50(b), Rule 52(b), or Rule 59 shall be tolled longer than 90 days from the date the judgment is entered. ~~Consent~~ Subject to the provisions of Rule 7(b)(4), consent for the signing and entry of a judgment out of term, session, county, and district shall be deemed to have been given unless an express objection to such action was made on the record prior to the end of the term or session at which the matter was heard.

Notwithstanding any other law to the contrary, any judgment entered by a magistrate in a small claims action pursuant to Article 19 of Chapter 7A shall be entered in accordance with this Rule except judgments announced and signed in open court at the

conclusion of a trial are considered to be served on the parties, and copies of any judgment not announced and signed in open court at the conclusion of a trial shall be served by the magistrate on all parties in accordance with this Rule, within three days after the judgment is entered. If service is by mail, three days shall be added to the time periods prescribed by G.S. 7A-228. All time periods within which a party may further act pursuant to G.S. 7A-228 shall be tolled for the duration of any period of noncompliance of this service requirement, provided that no time period shall be tolled longer than 90 days from the date judgment is entered."

SECTION 3. This act becomes effective October 1, 2005, and applies to motions filed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 11:51 a.m. on the 7th day of July, 2005.

H.B. 1430 **Session Law 2005-164**

AN ACT TO LIMIT THE PENALTY FOR OBSTRUCTING A BOAT LAUNCHING AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-135.1 reads as rewritten:

"§ **113-135.1. Limitation upon penalty for offense created by rules of Wildlife Resources Commission in certain instances.**

(a) To prevent unsuspecting members of the public from being subject to harsh criminal penalties for offenses created by rules of the Wildlife Resources Commission, the penalty for an offense ~~which~~ that is solely a violation of rules of the Wildlife Resources Commission is limited to a fine of ten dollars ($10.00) except ~~that offenses~~ as follows:

(1) Offenses set out in ~~Section~~subsection (b) of this section are ~~punished~~ punishable as set forth in G.S. 113-135 or other ~~sections.~~sections of the General Statutes.

(2) A person who parks a vehicle in violation of a rule regulating the parking of vehicles at boating access or boating launch areas is responsible for an infraction and shall pay a fine of fifty dollars ($50.00).

(b) The limitation upon penalty does not apply to any rule violation:

(1) Punishable under G.S. 113-294 or otherwise involving aggravating elements ~~which~~ that result in a greater punishment than provided by G.S. 113-135;

(2) ~~Which~~ That involves a defendant subject to the collection-license provisions of G.S. 113-272.4 or who is a dealer as defined in G.S. 113-273; or

(3) Relating to seasons, bag limits, creel limits, taking fish other than with hook and line, buying or selling wildlife, possessing or transporting live wildlife, taking wildlife at night or with the aid of a conveyance, or falconry."

SECTION 2. G.S. 113-264, as amended by S.L. 2005-82, is amended by adding a new subsection to read:

"(e) A wildlife protector or law enforcement officer of this State or its subdivisions may have a vehicle towed at a Commission-owned or operated public boating access area if the vehicle:

(1) Is parked in an area other than one designated for parking; or

(2) Is left by an individual for a purpose other than launching, operating, or retrieving a vessel."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 11:52 a.m. on the 7th day of July, 2005.

H.B. 1552 **Session Law 2005-165**

AN ACT TO EXTEND THE REGULATORY AUTHORITY OVER CAMPUS PARKING TO THE BOARD OF TRUSTEES OF NORTH CAROLINA A&T STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-44.5 is amended by adding the following new subdivision to read:

"(3c) The Board of Trustees of North Carolina Agricultural and Technical State University may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following streets in the City of Greensboro where parking is not prohibited by an ordinance of the City of Greensboro:

a. Dudley Street between Market Street and Bluford Street.

b. Bluford Street between Regan Street and Luther Street.

c. Laurel Street between Lindsay Street and East Market Street.

d. Benbow Road between Sullivan Street and East Market Street.

e. Sullivan Street between O'Henry Boulevard overpass and Lindsay Street.

f. Beech Street between Bluford Street and Lindsay Street.

g. Obermeyer Street between Bluford Street and Market Street.

h. Daniel Street between Bluford Street and Market Street.

i. Nocho Street between Bluford Street and Market Street.

In addition, the Board of Trustees of North Carolina A&T State University may regulate traffic on the following streets for the portion of those streets that abut the university: Benbow Road, Dudley Street, Lindsay Street, and Market Street, provided that the regulation is not inconsistent with ordinances of the City of Greensboro."

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

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 11:52 a.m. on the 7th day of July, 2005.

H.B. 532 **Session Law 2005-166**

AN ACT TO STREAMLINE ADOPTION PROCEDURES BY REQUIRING CONSENT FROM THOSE PERSONS WHOSE PARENTAL STATUS HAS BEEN DETERMINED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-2-206 reads as rewritten:

"§ **48-2-206. Prebirth determination of right to consent.**

(a) ~~Anytime~~ At any time after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

> "[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required."

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the ~~minor.~~ minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

> "To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

SECTION 2. Part 2 of Article 2 of Chapter 48 of the General Statutes is amended by adding a new section to read:

"§ **48-2-207. Necessity of consent post-petition.**

(a) If any individual described in G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.

(b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required if any of the following:

(1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S. 48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.

(2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.

(c) If the court determines that the consent of any individual is required, the adoption cannot proceed until such individual's consent is obtained or such individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that such individual's consent is required does not entitle such individual to physical custody of the minor.

(d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, such individual shall not be entitled to receive notice of, or to participate in, further proceedings in the adoption."

SECTION 3. G.S. 48-2-304(c) reads as rewritten:

"(c) A petition to adopt a minor under Article 3 of this Chapter shall also ~~state:~~state all of the following:

(1) A description of the source of placement and the date of placement of the adoptee with the ~~petitioner; and~~petitioner.

(2) That the provisions of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, were

followed if the adoptee was brought into this State from another state for purposes of ~~adoption.~~ adoption, or that a statement is attached describing the circumstances of any noncompliance."

SECTION 4. G.S. 48-2-305(7) reads as rewritten:

"§ **48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed under G.S. 48-3-206.

(2) Any required consent or relinquishment that has been executed.

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee.

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee.

(5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307 or an affidavit from the petitioner stating why the assessment is not available.

(6) A copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available.

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State.~~State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment.

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

(10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 5. G.S. 48-2-401 reads as rewritten:

"§ **48-2-401. Notice by petitioner.**

(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

(b) In all adoptions, the petitioner shall serve notice of the filing ~~on:~~on each of the following:

(1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this ~~Chapter;~~Chapter.

(2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be ~~waived;~~waived, provided the court for cause may waive this notice requirement.

(3) Any individual who has executed a consent or relinquishment, but who the petitioner has actually been informed has filed an action to set it aside for fraud or ~~duress; and~~duress.

(4) Any other person designated by the court who can provide information relevant to the proposed adoption.

(c) In the adoption of a minor, the petitioner shall also serve notice of the filing ~~on:~~on each of the following:

(1) A minor whose consent is dispensed with under ~~G.S. 48-3-603(b)(2);~~ G.S. 48-3-603(b)(2).

(2) Any agency that placed the ~~adoptee;~~adoptee.

(3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, ~~or~~ a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent; and~~parent, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

(4) Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with the minor under an existing court order issued by a court in this State or another state.

(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt; provided the court for cause may waive the requirement of notice to a parent of an adult adoptee.

(e) Only those persons identified in subsections (b), (c), and (d) of this section are entitled to notice of the proceeding.

(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing."

SECTION 6. G.S. 48-2-405 reads as rewritten:

"§ **48-2-405. Rights of persons entitled to notice.**

~~A~~Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee."

SECTION 7. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 11:54 a.m. on the 7th day of July, 2005.

S.B. 806 **Session Law 2005-167**

AN ACT TO AMEND THE LAW REGARDING MEDIATED SETTLEMENT CONFERENCES IN SUPERIOR COURT, MEDIATION IN DISTRICT COURT DOMESTIC CASES, AND THE REGULATION OF MEDIATORS, AS RECOMMENDED BY THE DISPUTE RESOLUTION COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, ~~except in~~ except:

(1) In proceedings for sanctions under this section;

(2) ~~or~~ In proceedings to enforce or rescind a settlement of the ~~action.~~ action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No ~~such~~ settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement ~~conference.~~ conference or other settlement proceeding.

No ~~mediator~~ mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any ~~such~~ agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for ~~mediators,~~ mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.2 reads as rewritten:

"§ **7A-38.2. Regulation of ~~mediators.~~ mediators and other neutrals.**

(a) The Supreme Court is authorized to adopt standards of conduct for ~~the certification and conduct of~~ mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, and 7A-38.4A, or who participate in ~~the mediated settlement conference program established pursuant to G.S. 7A-38.1.~~ proceedings conducted pursuant to those sections. The standards may also regulate

mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards.

(b) The administration of ~~mediator certification, regulation of mediator conduct, and decertification~~ the certification and qualification of mediators and other neutrals, and mediator and other neutral training programs shall be conducted through the Dispute Resolution Commission, established under the Judicial Department. ~~The rules and regulations governing the operation of the Commission shall be adopted by the Supreme Court. The Commission shall be administered under the direction and supervision of the Director of the Administrative Office of the Courts. The Commission shall exercise all of its duties independently of the Director, except all management functions shall be performed under the direction and supervision of the Director.~~ The Supreme Court shall adopt rules and regulations governing the operation of the Commission. The Commission shall exercise all of its duties independently of the Director of the Administrative Office of the Courts, except that the Commission shall consult with the Director regarding personnel and budgeting matters.

(c) The Dispute Resolution Commission shall consist of ~~14~~ 15 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be superior court judges, and at least two of whom shall be district court judges; one clerk of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Members shall initially serve four-year terms, except that one judge, one mediator, one attorney, and the citizen member appointed by the Governor, shall be appointed for an initial term of two years. Incumbent members as of September 30, 1998 shall serve the remainder of the terms to which they were appointed. Members appointed to newly-created membership positions effective October 1, 1998 shall serve initial terms of two years. Thereafter, members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North Carolina Association of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts.

(d) An administrative fee, not to exceed two hundred dollars ($200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs ~~operation~~ operating under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff.

(e) The chair of the Commission may employ an executive secretary and other staff as necessary to assist the Commission in carrying out its duties. The chair may also employ special counsel or call upon the Attorney General to furnish counsel to assist the Commission in conducting hearings pursuant to its certification or qualification and regulatory responsibilities. Special counsel or counsel furnished by the Attorney General may present the evidence in support of a denial or revocation of certification or qualification or a complaint against a mediator, other neutral, training program, or trainers or staff affiliated with a program. Special counsel or counsel furnished by the Attorney General may also represent the Commission when its final determinations are the subject of an appeal.

(f) In connection with any investigation or hearing conducted pursuant to an application for certification or qualification of any mediator, other neutral, or training program, or conducted pursuant to any disciplinary matter, the chair of the Dispute Resolution Commission or his/her designee, may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the Dispute Resolution Commission or direct its executive secretary to issue such subpoenas on its behalf requiring attendance and the giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the power conferred in this section.

(g) The General Court of Justice, Superior Court Division, may enforce subpoenas issued in the name of the Dispute Resolution Commission and requiring attendance and the giving of testimony by witnesses and the production of books, papers, and other documentary evidence.

(h) The Commission shall keep confidential all information in its files pertaining to the certification of mediators, the qualification of other neutrals, the certification or qualification of training programs for mediators or other neutrals, and the renewal of such certifications and qualifications. However, disciplinary matters reported by an applicant for certification or qualification, a mediator, other neutral, trainer, or manager shall be treated as a complaint as set forth below. The Commission shall also keep confidential the identity of those persons requesting informal guidance or the issuance of formal advisory opinions from the Commission or its staff.

Unless an applicant, mediator, other neutral, or training program trainer or manager requests otherwise, all information in the Commission's disciplinary files pertaining to a complaint regarding the conduct of an applicant, mediator, other neutral, trainer, or manager shall remain confidential until such time as a preliminary investigation is completed and a determination is made that probable cause exists to believe that the applicant, mediator, neutral, trainer, or manager's words or actions:

(1) Violate standards for the conduct of mediators or other neutrals;

(2) Violate other standards of professional conduct to which the applicant, mediator, neutral, trainer, or manager is subject;

(3) Violate program rules; or

(4) Consist of conduct or actions that are inconsistent with good moral character or reflect a lack of fitness to serve as a mediator, other neutral, trainer, or manager.

The Commission may publish names, contact information, and biographical information for mediators, neutrals, and training programs that have been certified or qualified.

(i) The Commission shall conduct its initial review of all applications for certification and certification renewal or qualification and qualification renewal in private. The Commission shall also conduct its initial review of complaints regarding the qualifications of any certified mediator, other neutral, or training program, but not involving issues of ethics or conduct, in private. Appeals of denials of applications for certification, qualification, or renewal and appeals of revocations of certification or qualification for reasons that do not relate to ethics or conduct, shall be heard by the Commission in private unless the applicant, certified mediator, qualified neutral, or certified or qualified training program requests a public hearing.

(j) The Commission shall conduct in private its initial review of all matters relating to the ethics or conduct of an applicant for certification, qualification, or renewal of certification or qualification or the ethics or conduct of a mediator, other neutral, trainer, or training program manager. If an applicant appeals the Commission's initial determination that sanctions be imposed, the hearing of such appeal by the Commission shall be open to the public, except that for good cause shown, the presiding officer may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing shall be closed to the public over the objection of an applicant, mediator, other neutral, trainer, or training program manager.

(k) Appeals of final determinations by the Commission to deny certification or renewal of certification, to revoke certification, or to discipline a mediator, trainer, or training program manager shall be filed in the General Court of Justice, Wake County Superior Court Division. Notice of appeal shall be filed within 30 days of the date of the Commission's decision."

SECTION 3. G.S. 7A-38.4A(j) reads as rewritten:

"(j) Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this ~~section~~ section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, ~~except~~ except:

(1) ~~in~~ In proceedings for sanctions under this section;

(2) ~~or~~ In proceedings to enforce or rescind a settlement of the ~~action.~~ action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at ~~a settlement conference or settlement~~ the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the

parties and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, ~~or other neutral conducting a settlement procedure~~ other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement ~~procedure~~ proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any ~~of these~~ agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for ~~mediators,~~ mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 4. If "A Bill To Be Entitled An Act To Authorize The Clerk Of Superior Court To Order Mediation In Matters Within The Clerk's Jurisdiction" becomes law, then G.S. 7A-38.2(a), as amended by Section 2 of this act, reads as rewritten:

"(a) The Supreme Court is authorized to adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, G.S. 7A-38.3, G.S. 7A-38.3B, and G.S. 7A-38.4A who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 5. Sections 1 and 3 of this act become effective October 1, 2005, and apply to mediations commenced on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Became law upon approval of the Governor at 11:55 a.m. on the 7th day of July, 2005.

H.B. 1482 **Session Law 2005-168**

AN ACT TO EXEMPT FROM THE LAW GOVERNING SMOKING RESTRICTIONS LOCAL DEPARTMENTS OF SOCIAL SERVICES AND THE BUILDINGS AND GROUNDS WHERE THEY ARE LOCATED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599, as amended by S.L. 2005-19, reads as rewritten:

"§ **143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.
(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.

(5) Local health ~~department and the building and grounds where the local health department is located.~~department and local department of social services and the building and grounds where the local health department or local department of social services, as applicable, is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health ~~department.~~ department or a local department of social services.

(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.

(7) Tobacco manufacturing, processing, and administrative facilities."

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

In the General Assembly read three times and ratified this the 27th day of June, 2005.

Became law upon approval of the Governor at 12:51 p.m. on the 7th day of July, 2005.

H.B. 800 **Session Law 2005-169**

AN ACT REQUIRING VENDORS BIDDING ON STATE CONTRACTS TO DISCLOSE WHETHER SERVICES WILL BE PERFORMED OUTSIDE THE UNITED STATES.

The General Assembly of North Carolina enacts:

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

"**§ 143-59.4. Contracts performed outside the United States.**

(a) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts, and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(b) The Secretary of Administration shall retain the statements required by subsection (a) of this section regardless of the State entity that awards the contract and shall report annually to the Joint Legislative Commission on Governmental Operations on the number of contracts which are anticipated to be performed outside the United States."

SECTION 2. This act becomes effective October 1, 2005, and applies to all bids submitted after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law upon approval of the Governor at 12:59 p.m. on the 7th day of July, 2005.

H.B. 635 **Session Law 2005-170**

AN ACT TO REQUIRE AT LEAST ONE PUBLIC COMMENT PERIOD PER MONTH AT A REGULAR MEETING OF A LOCAL BOARD OF EDUCATION,

COUNTY BOARD OF COMMISSIONERS, OR MUNICIPAL GOVERNING BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-51. Public comment period during regular meetings.**

The local board of education shall provide at least one period for public comment per month at a regular meeting of the board. The board may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The board is not required to provide a public comment period under this section if no regular meeting is held during the month."

SECTION 2. Part 3 of Article 4 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-52.1. Public comment period during regular meetings.**

The board of commissioners shall provide at least one period for public comment per month at a regular meeting of the board. The board may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The board is not required to provide a public comment period under this section if no regular meeting is held during the month."

SECTION 3. Part 3 of Article 5 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-81.1. Public comment period during regular meetings.**

The council shall provide at least one period for public comment per month at a regular meeting of the council. The council may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The council is not required to provide a public comment period under this section if no regular meeting is held during the month."

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

In the General Assembly read three times and ratified this the 30th day of June, 2005.

Became law without signature of the Governor on the 11th day of July, 2005.

S.B. 278 **Session Law 2005-171**

AN ACT TO AUTHORIZE THE FOOTHILLS REGIONAL AIRPORT AUTHORITY TO ACQUIRE AND CONVEY PROPERTY TO THE STATE OF NORTH CAROLINA FOR USE AS A CORRECTIONAL FACILITY AS PART OF THE STATE PRISON SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. The Foothills Regional Airport Authority, a body politic and corporate, may acquire real and personal property and convey that property to the State of North Carolina for use as a correctional facility as part of the State Prison System. Any property now held by the Foothills Regional Airport Authority, regardless of the purpose for which the property was acquired, may be conveyed to the State for use as a correctional facility. Conveyances made under the authority granted by this act may be made with or without consideration and on any terms that the Authority deems appropriate.

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

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law on the date it was ratified.

S.B. 435 **Session Law 2005-172**

AN ACT CLARIFYING THE AUTHORITY OF THE COUNTY OF DURHAM TO ENTER INTO PUBLIC-PRIVATE PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 908 of the 1986 Session Laws, as amended by Section 2 of Chapter 789 of the 1987 Session Laws, reads as rewritten:

"Section 1. (a) Definition. For the purpose of this act, ~~an "urban development project"~~ a "public-private project" is defined as a capital project which is comprised of one or more buildings or other improvements and includes both public and private facilities. ~~By way of illustration and not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center, and a privately owned hotel or office building.~~ The public-private project may be located anywhere within Durham County, including those portions of Durham County within municipal limits.

(b) Authorization. If the Board of Commissioners of Durham County determines that the County will significantly benefit from the County's participation in the development of ~~an urban development~~ a public-private project, as defined, then the County may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of ~~an urban development~~ a public-private project, or of specific facilities within such a project, including the making of loans and grants from moneys lawfully available therefore. The County may enter into binding contracts with the City of Durham or one or more private developers, or both, with respect to acquiring, constructing, owning, or operating such a project. ~~Such a~~ The contract shall among other provisions, specify the following:

(1) The property interest of the County and all other participants in the development of the project.

(2) The responsibilities of the County and all other participants in the development of the project.

(3) The responsibilities of the County and all other participants with respect to financing of the project.

~~Such a~~ The contract may be entered into before or after the acquisition of any real property necessary to the project.

(c) Property acquisition. ~~An urban development~~ A public-private project may be constructed on property acquired by the developer or developers, on property acquired by the County, on property acquired by the City, or on property acquired by the County, City, and developers.

(d) Property disposition. The County may lease or convey its interest in ~~urban development~~ public-private projects property or other property owned by it, including air rights over public facilities, through any of the methods authorized in G.S. 153A-176 and G.S. 160A-266 including private negotiation and sale without limitation as to value of the interest conveyed. Notwithstanding the provisions of G.S. 160A-272, property owned by the County may be leased for a period of 10 years or longer without being treated as a sale of the property.

(e) Construction of the project. The contract between the county and the developer or developers may provide that the developer or developers shall be responsible for: (i) construction of the entire ~~urban development~~ public-private project, (ii) reconstruction and/or repair of the ~~urban development~~ public-private project or any part thereof subsequent to construction of said project, (iii) construction of any addition to the ~~urban development~~ public-private project, (iv) renovation of the ~~urban development~~ public-private project or any part thereof, and/or (v) purchase of apparatus, supplies, materials, or equipment for the ~~urban development~~ public-private project (whether during the initial equipping of the said project or subsequent thereto). Additionally, the contract between the county and the developer or developers may provide that the county and the developer or developers shall use the same contractor or contractors in constructing a portion of or the entire public-private project. If so, the contract shall include such provisions as the board of county commissioners deems sufficient to assure that the public facility or facilities included in the project or added thereto are constructed, reconstructed, repaired and/or renovated, and the apparatus, supplies, materials and equipment purchased for the public facility or facilities included in the project, are purchased at a reasonable price and the provisions of Article 8 of Chapter 143 and Article 3 of Chapter 44A of the General Statutes shall not apply to ~~such urban development~~ the public-private project.

(f) Operation. The County may contract for the operation of any public facility or facilities included in ~~an urban development~~ a public-private project by any person, firm, or corporation, public or private.

(g) Financing. To assist in the financing of its share of ~~an urban development~~ a public-private project, the County may apply for, accept, and expend funds from the federal or State government or any other lawful source.

(h) Other authority. The authority granted by this section is in addition to and not in derogation of any other lawful authority granted to the County by law. The County may exercise any authority granted to it by local act or general statute or law in furtherance of ~~an urban development~~ a public-private project. By way of illustration but not of limitation, the County may exercise the following authority in furtherance of ~~an urban development~~ a public-private project:

(1) The authority granted in G.S. 153A-176 and Article 12 of Chapter 160A with respect to the public or private sale, lease, rent, exchange, or other conveyance of property.

(2) The authority of G.S. 153A-13 and G.S. 153A-449 with respect to contracts with, and appropriation of money to, persons, associations or corporations for the accomplishment of public purposes."

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

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law on the date it was ratified.

H.B. 370 **Session Law 2005-173**

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF KANNAPOLIS AND THE TOWNS OF LANDIS, SHALLOTTE, AND SPENCER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

…

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallotte, Spencer, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon."

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

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law on the date it was ratified.

S.B. 340 **Session Law 2005-174**

AN ACT TO AUTHORIZE THE TOWN OF WELDON TO CONVEY CERTAIN PROPERTY AT PRIVATE OR NEGOTIATED SALE; TO AUTHORIZE THE CITY OF ROANOKE RAPIDS TO UTILIZE THE DESIGN-BUILD METHOD OF CONSTRUCTION FOR A FIRE STATION; AND TO EXEMPT FROM CERTAIN PUBLIC BIDDING LAWS THE CITY OF ROANOKE RAPIDS IN THE

CONSTRUCTION OF THEATER PROJECTS IN ITS MUSIC THEATER AND ENTERTAINMENT DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Weldon may convey by private negotiation and sale, with or without monetary consideration, and upon such terms as the town deems appropriate, any or all of its right, title, and interest in some or all of the following described property:

TRACT 1

That certain tract or parcel of land, together with all the improvements thereon and appurtenances thereunto belonging, lying and being situate in Weldon Township, Halifax County, North Carolina, containing 13.892 Acres, and shown on that certain plat entitled "Plat Showing Property Being Conveyed to Duquesne Energy, Inc. From Rightmyer Machine Rentals, Inc.", prepared by Timmons, dated January 13, 1998, and recorded in Plat Cabinet 6, Slide 22-T, Halifax Public Registry, and being more particularly bounded and described in accordance with said plat as follows:

Commencing at a found monument located on the Eastern right of way of N. C. State Road No. 1734 and the Northern right of way line of N. C. State Road No. 1710, said monument being the true point and place of beginning; thence South 89° 47' 07" West, a distance of 20.07 feet to a found rod; thence along the Eastern right of way line of said State Road No. 1710, North 08° 21' 36" East, a distance of 658.24 feet to a found pipe; thence leaving said right of way line South 81° 31' 33" East, a distance of 400.10 feet to a found pipe; thence North 08° 27' 19" East, a distance of 257.86 feet to a found pipe; thence South 89° 46' 55" East, a distance of 357.26 feet to a found pipe; thence South 11° 21' 04" West, a distance of 967.55 feet to a found pipe; thence North 89° 42' 06" West, a distance of 690.50 feet to a found pipe; thence North 08° 15' 37" East, a distance of 100.17 feet to a found monument, said monument being the true point and place of beginning and containing 13.892 acres of land.

TRACT 2

That certain tract or parcel of land situate in the Town of Weldon, Weldon Township, Halifax County, North Carolina, together with all improvements located thereon, and more particularly described as follows: Beginning at a point in the Southeastern right of way line of the Seaboard Coastline Railroad at which point said right of way line intersects the Northeastern right of way line of West 2nd Street at the back of the curb; thence with the right of way line of West 2nd Street along the back of the curb South 55° 19' East 78.55 feet to a point; thence still with the right of way line of West 2nd Street along the back of the curb South 56° 49' East 77.40 feet to a point; thence in a Southeasterly direction a curve to the left onto Washington Avenue, said curve having a radius of 8.36 feet, 13.09 feet to a point in the back of the curb on Washington Avenue in the Northwestern right of way line of Washington Avenue; thence with the right of way line of Washington Avenue along the back of the curb North 33° 30' East 102.05 feet to a point near the middle of a party brick wall separating the building on the property herein conveyed and the building now occupied as the FCX; thence North 56° 25' West 97.71 feet to a point in the Southeastern right of way line of the Seaboard Coastline Railroad; thence with said railroad right of way line South 64° 49' West 119.02 feet to a railroad iron; thence still with said railroad right of way line South 64° 49' West 9 feet to a point of beginning, containing 14,500.53 square feet as described in a certain map prepared by J. C. Shearin; and being the identical real

property conveyed unto Harold W. Wray et ux et al by deed of Heilig-Meyers Company, a Virginia corporation, dated August 6, 2002, and recorded at Book 1928, Page 651, Halifax Public Registry.

TRACT 3

The property within the confines of the block bounded by Washington Avenue, First Street, Sycamore Street, and Second Street.

SECTION 1.(b) This section applies to the Town of Weldon only.

SECTION 2.(a) Section 3 of S.L. 2001-425 reads as rewritten:

"**SECTION 3.** Notwithstanding G.S. 143-128, 143-129, and 143-132, the City of Roanoke Rapids may use the design-build method of construction for the Neighborhood Resource Center on the site of the old A&P building on the corner of Third and Jackson ~~Streets.~~ Streets and for a new fire station on Old Farm Road."

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

SECTION 3.(a) Except for G.S. 143-128.2 and G.S. 143-128.3, the provisions of Article 8 of Chapter 143 of the General Statutes do not apply to the construction of theater projects in the Music Theater and Entertainment District, as that district is defined by the city council.

SECTION 3.(b) This section applies only to the City of Roanoke Rapids.

SECTION 3.(c) This section is effective when it becomes law and expires January 1, 2009.

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

In the General Assembly read three times and ratified this the 12th day of July, 2005.

Became law on the date it was ratified.

H.B. 196 **Session Law 2005-175**

AN ACT AUTHORIZING THE CITIES OF OXFORD AND MOREHEAD CITY AND THE TOWNS OF ATLANTIC BEACH AND NEWPORT TO GIVE ANNUAL NOTICE TO VIOLATORS OF THE MUNICIPALITIES WEEDED LOT ORDINANCES.

The General Assembly of North Carolina enacts:

SECTION 1. A municipality may notify a violator of the municipality's weeded lot ordinance that if the violator's property is found to be in violation of the ordinance again in the calendar year in which notice is given, the municipality shall, without further notice, take action to remedy the violation and the expense of that action shall be charged to the violator. The notice may also provide that for each additional violation the municipality shall charge the violator the expense of the action and a surcharge of up to fifty percent (50%) over the expense to remedy the preceding violation. Notice of violation shall be served by registered or certified mail.

SECTION 2. This act applies to the Cities of Oxford and Morehead City and the Towns of Atlantic Beach and Newport only.

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

In the General Assembly read three times and ratified this the 12th day of July, 2005.

Became law on the date it was ratified.

H.B. 1097 **Session Law 2005-176**

AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129.2 reads as rewritten:

"§ **143-129.2. Construction, design, and operation of solid waste management ~~facilities.~~and sludge management facilities.**

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. ~~130A-290.~~130A-290, except that the term 'unit of local government' also includes a sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes, an authority created under Article 1 of Chapter 162A of the General Statutes, a metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes, and a county water and sewer district created under Article 6 of Chapter 162A of the General Statutes. As used in this section, the term 'sludge management facility' means a facility that processes sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal but does not include any component of a wastewater treatment process or facility that generates sludge.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management ~~technology~~ technologies for processing mixed solid ~~waste,~~ waste and sludge generated by water and wastewater treatment facilities, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article ~~8, or any other general, special~~ or any local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall ~~include:~~include all of the following:

(1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation

of work tasks, and the carrying out of all responsibilities required by a proposed ~~contract;~~contract.

(2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of ~~such~~ the proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of ~~such proposal;~~the proposal.

(3) ~~Such~~ Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to ~~such~~ a request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon ~~such~~ any other factors and information ~~as~~ that the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, ~~such~~ the determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article ~~8, or any other general,~~ or any local ~~or special~~ law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

(1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain ~~such~~ a solid waste or sludge management ~~facility, upon such terms and conditions for such consideration and for such term or~~ facility upon such terms and conditions, for such consideration, and for such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and ~~such person;~~the person.

(2) Payment by the unit of local government of a fee or other charge to ~~such~~ the person for acceptance, processing, recycling, management and disposal of solid ~~waste;~~waste or sludge.

(3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid ~~wastes; and~~wastes or sludge.

(4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) The construction work for any facility or structure ~~which~~ that is ancillary to ~~the~~ a solid waste or sludge management facility and ~~which~~ that does not involve storage and processing of solid waste or sludge or the separation, ~~extraction~~ extraction, and recovery of useful or marketable forms of energy and materials from solid waste at ~~the~~ a solid waste management ~~facility,~~ facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. ~~Such ancillary~~ Ancillary facilities ~~shall~~ include but ~~shall~~ are not ~~necessarily be~~ limited to ~~the following:~~ roads, water and sewer lines to the facility limits, transfer stations, scale ~~house,~~ houses, administration ~~buildings~~ buildings, and residue and bypass disposal sites."

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

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:26 p.m. on the 12th day of July, 2005.

H.B. 923 **Session Law 2005-177**

AN ACT AMENDING THE LAWS REGULATING POSTSEPARATION SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-16.1A(4) reads as rewritten:

"As used in this Chapter, unless the context clearly requires otherwise, the following definitions apply:

…

(4) "Postseparation support" means spousal support to be paid until the earlier of ~~either the date specified in the order of postseparation support, or an order awarding or denying alimony.~~ any of the following:

a. The date specified in the order for postseparation support.

b. The entry of an order awarding or denying alimony.

c. The dismissal of the alimony claim.

d. The entry of a judgment of absolute divorce if no claim of alimony is pending at the time of entry of the judgment of absolute divorce.

e. Termination of postseparation support as provided in G.S. 50-16.9(b).

Postseparation support may be ordered in an action for divorce, whether absolute or from bed and board, for annulment, or for alimony without divorce. However, if postseparation support is ordered at the time of the entry of a judgment of absolute divorce, a claim for alimony must be pending at the time of the entry of the judgment of divorce."

SECTION 2. This act becomes effective October 1, 2005, and applies to all postseparation support orders issued on or after that date.

In the General Assembly read three times and ratified this the 6th day of July, 2005.

Became law upon approval of the Governor at 8:27 p.m. on the 12th day of July, 2005.

H.B. 510 **Session Law 2005-178**

AN ACT TO ENCOURAGE PERSONS TO ACCEPT THE AUTHORITY GRANTED UNDER POWERS OF ATTORNEY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Enforcement of Power of Attorney.

"**§ 32A-35. Reliance on power of attorney.**

(a) Unless (i) a person has actual knowledge that a writing is not a valid power of attorney, or (ii) the action taken or to be taken by a person named as attorney-in-fact in a writing that purports to confer a power of attorney is beyond the apparent power or authority of that named attorney-in-fact as granted in that writing, a person who in good faith relies on a writing that on its face is duly signed, acknowledged, and otherwise appears regular, and that purports to confer a power of attorney, durable or otherwise, shall be protected to the full extent of the powers and authority that reasonably appear to be granted to the attorney-in-fact designated in that writing, and no person so dealing in good faith with that named attorney-in-fact shall be held responsible for any breach of fiduciary duty by that attorney-in-fact, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by that attorney-in-fact. This subsection applies without regard to whether or not the person dealing with the attorney-in-fact demands or receives an affidavit under subsection (b) of this section. A person who conducts activities through employees or other agents has actual knowledge of a fact involving a power of attorney only from the time the information was received by an employee or agent having the authority to approve the power of attorney presented.

(b) A person may, prior to acceptance of the authority of the attorney-in-fact or at any other time, request an affidavit executed by the attorney-in-fact to the effect that the attorney-in-fact did not have, at the time of the presentation to the person of the writing purporting to confer a power of attorney, actual knowledge of either (i) the revocation of the power of attorney, or (ii) facts that would cause the attorney-in-fact to question the authenticity or validity of the power of attorney. An affidavit meeting the requirements of this subsection shall be sufficient proof to the requesting person, as of the date of the affidavit, of (i) the nonrevocation of the power of attorney, and (ii) the authenticity and validity of the power of attorney. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit shall be prepared so as to be recordable. An affidavit prepared under this subsection may also be used as an affidavit under G.S. 32A-13(c). An affidavit in the form described in subsection (d) of this section shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.

(c) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

(d) Example of Affidavit of Attorney-in-Fact.

STATE OF _____
COUNTY OF _____
The undersigned does hereby state and affirm the following:

(1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by _____ ("Principal") on [date]_____, ____ (the "Power of Attorney").

(2) The Power of Attorney is currently exercisable by the undersigned.

(3) The undersigned has no actual knowledge of any of the following:

a. The Principal is deceased.

b. The Power of Attorney has been revoked or terminated, partially or otherwise.

c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed.

d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.

(4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the __ day of ____.

_____

[Signature]

[Acknowledgement]

"§ **32A-36. Penalty for unreasonable refusal to recognize power.**

(a) A person dealing with an attorney-in-fact who unreasonably refuses to accept a power of attorney shall be subject to all of the following:

(1) Liability for reasonable attorneys' fees and costs incurred in any action or proceeding necessary to confirm the validity of a power of attorney or to implement a power of attorney.

(2) An order of the court requiring acceptance of the valid power of attorney.

(3) Any other remedy available under applicable law.

(b) Acceptance of a power of attorney shall mean (i) acknowledging the validity and authenticity of the document, and (ii) allowing the attorney-in-fact to conduct business in accordance with the powers that reasonably appear to be granted in the document.

"§ **32A-37. Protection for third parties.**

(a) A person is not required to honor the attorney-in-fact's authority or to conduct business with the attorney-in-fact if the person is not otherwise required to conduct business with the principal in the same circumstances.

(b) Without limiting the generality of subsection (a) of this section, nothing in this Article requires a person to do any of the following:

(1) Engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the person, whether in an individual or fiduciary capacity.

(2) Open an account for a principal at the request of an attorney-in-fact if the principal is not currently a customer of the person.

(3) Make a loan to the principal at the request of the attorney-in-fact.

(c) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within seven business days.

(d) A person who has reasonable cause to question the authenticity or validity of a power of attorney may refuse to accept the authority granted by that document.

(e) A person who promptly requests, and does not within a reasonable time receive, an affidavit as described in G.S. 32A-35(b), is not deemed under G.S. 32A-36 to have unreasonably refused to accept a power of attorney.

(f) The principal, the attorney-in-fact, or a person presented with a power of attorney may initiate a special proceeding in accordance with the procedures of Article 33 of Chapter 1 of the General Statutes to request a determination of the validity of the power of attorney. If the decision in that special proceeding is that reasonable cause to refuse to accept the power of attorney existed, and that the attorney-in-fact willfully misrepresented the authenticity or validity of the power of attorney, the attorney-in-fact, and not the principal, is liable for reasonable attorneys' fees and costs incurred in that action.

(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of attorney.

(h) Nothing in this Article amends or modifies the rights of banks and other depository institutions to terminate any deposit account in accordance with applicable law.

"**§ 32A-38. Scope of Article.**

This Article shall apply to all or any portion of a document executed under Article 1, Article 2, or Article 2A of this Chapter."

SECTION 2. This act becomes effective October 1, 2005, and applies to powers of attorney created before, on, or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:28 p.m. on the 12th day of July, 2005.

H.B. 11 **Session Law 2005-179**

AN ACT TO CLARIFY THE CERTIFICATION REQUIREMENTS FOR SCHOOL ADMINISTRATORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-290.7(b) reads as rewritten:

"(b) To qualify for certification as a school administrator, an individual must:

(1) Submit a complete application to the State ~~Board.~~Board;

(2) Pay the applicable ~~fee.~~fee;

(3) Have a bachelors degree from an accredited college or accredited ~~university.~~university;

(4) Either (i) have a graduate degree from a public school administration program that meets the public school ~~administrator~~ administration program approval standards set by the State Board of Education, ~~or~~ (ii) have a masters degree from an accredited college or accredited university and have completed by December 31, 1999, a public school

administration program that meets the public school administration program approval standards set by the State Board of Education, or (iii) have education and training the State Board of Education determines are equivalent; and

(5) Pass the exam adopted by the State Board.

The State Board may designate initial certification as a license. Advanced training may be designated as a certified area of practice."

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

In the General Assembly read three times and ratified this the 6th day of July, 2005.

Became law upon approval of the Governor at 8:29 p.m. on the 12th day of July, 2005.

H.B. 804 **Session Law 2005-180**

AN ACT TO AMEND THE ORDER OF PAYMENT OF A CLAIM FOR EQUITABLE DISTRIBUTION UNDER THE LAWS RELATING TO THE ADMINISTRATION OF DECEDENTS' ESTATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-19-6 reads as rewritten:

"§ **28A-19-6. Order of payment of claims.**

After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of two thousand five hundred dollars ($2,500). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of two thousand five hundred dollars ($2,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. All dues, taxes, and other claims with preference under the laws of the United States.

Fourth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

Sixth class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Seventh class. A claim for equitable distribution.

~~Seventh~~ Eighth class. All other claims."

SECTION 2. This act is effective when it becomes law and applies to the estates of persons who died on or after June 12, 2003, provided that an agreement entered into or performed pursuant to G.S. 28A-19-19(b) before the effective date is not affected by this act.

In the General Assembly read three times and ratified this the 6th day of July, 2005.

Became law upon approval of the Governor at 8:29 p.m. on the 12th day of July, 2005.

H.B. 653 **Session Law 2005-181**

AN ACT TO MAKE CHANGES TO THE CREDIT INSURANCE LAWS TO DEFINE "CRITICAL PERIOD COVERAGE"; CLARIFY THE APPROPRIATE REFUND OF PREMIUMS METHOD WHEN A POLICY OR GROUP CERTIFICATE IS TERMINATED PRIOR TO THE SCHEDULED MATURITY DATE OF THE SUBJECT DEBT; ALLOW CREDIT CARD COVERAGE FROM OUT-OF-STATE FINANCIAL INSTITUTIONS; PROVIDE THAT INSURERS MUST ACKNOWLEDGE TO THE CLAIMANT ANY CLAIMS NOT PAID WITHIN THIRTY DAYS; CLARIFY THAT INSURERS CAN REQUIRE REGISTRATION WITH THE STATE UNEMPLOYMENT OFFICE AND PROVISION OF AN OFFICIAL STATE UNEMPLOYMENT OFFICE DECISION LETTER REGARDING THE CLAIM TO QUALIFY FOR CREDIT UNEMPLOYMENT INSURANCE BENEFITS UNDER THE POLICY BUT CANNOT IMPOSE A TIME LIMIT ON THAT REGISTRATION; AND PROVIDE THE COMMISSIONER OF INSURANCE WITH THE AUTHORITY TO ENFORCE THE LAWS GOVERNING CREDIT INSURANCE CONSISTENT WITH THE COMMISSIONER'S GENERAL ENFORCEMENT AUTHORITY AS SET FORTH IN CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 2. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be the actuarial method of calculating refunds which produces a refund equal to the original premium multiplied by the ratio of the sum of the remaining insured balances divided by the sum of the original insured balances as of the due date nearest the date of prepayment in full. The refund of premiums for ~~decreasing term credit life insurance in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level

term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 3. G.S. 58-57-55 reads as rewritten:

"§ **58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. With the exception of credit insurance issued in accordance with G.S. 58-57-105, all ~~All~~ policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 4. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgment shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgment shall include one of the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 5. G.S. 58-57-110 reads as rewritten:

"§ **58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive ~~months;~~ months.

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or ~~lockout;~~ lockout.

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal misconduct.

(4) Eligibility for benefits may be based upon registration with the State unemployment office but shall not be limited by any provision requiring registration within a specified time. An insurer may require the insured to provide a copy of the official State unemployment office

decision letter regarding the claim for State unemployment benefits in order to qualify for benefits. The official State unemployment office decision letter may only be used to deny a claim for benefits under the credit unemployment coverage if the letter cites a reason listed in G.S. 58-57-110(a)(3).

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage."

SECTION 6. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-57-71. Enforcement and penalties.**

(a) The Commissioner may, after notice and opportunity for a hearing, impose civil penalties or petition for restitution under G.S. 58-2-70, revoke, suspend, or restrict the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order, or rule applicable to the insurer.

(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

(3) The insurer has published or made to the Department or to the public any false statement or report.

(4) The insurer or any of the insurer's officers, directors, employees, or other representatives refuse to submit to any examination authorized by law or refuse to perform any legal obligation in relation to an examination.

(5) The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any suspension, revocation, or refusal to renew an insurer's license under this section may also be made applicable to the license or registration of any individual regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section.

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgment of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim. With respect to a claim under an accident, health, or disability policy, if the acknowledgment sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been

completed and whether the insurer needs additional information to process the claim. If the claim acknowledgment includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report.

(d) If a foreign insurance company's license is suspended or revoked, the Commissioner shall cause written notification of the suspension or revocation to be given to all of the company's agents in this State. Until the Commissioner restores the company's license, the company shall not write any new business in this State.

(e) The Commissioner may, after considering the standards under G.S. 58-30-60(b), restrict an insurer's license by prohibiting or limiting the kind or amount of insurance written by that insurer. For a foreign insurer, this restriction relates to the insurer's business conducted in this State. The Commissioner shall remove any restriction under this subsection once the Commissioner determines that the operations of the insurer are no longer hazardous to the public or the insurer's policyholders or creditors."

SECTION 7. G.S. 58-57-70 and G.S. 58-57-80 are repealed.

SECTION 8. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 8:31 p.m. on the 12th day of July, 2005.

H.B. 1392 **Session Law 2005-182**

AN ACT TO CREATE A CLASS H FELONY OFFENSE FOR FAILURE TO RETURN A HIRED MOTOR VEHICLE VALUED IN EXCESS OF FOUR THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"§ **14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value at the time of the rental or hiring of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person who rented or hired it and failed to return it shall be guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"§ **14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,

a. Within 10 days, and

b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-168.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle; demand for return or payment.**

(a) Prima Facie Evidence. – It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instrument, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made in accordance with subsection (b) of this section; or

(2) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

(b) Method of Demand; When Effective. –

(1) Demand for return of a leased or rented truck, automobile, or other motor vehicle may be made in one of three ways:

a. By personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease, bailment, or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease, bailment, or rental agreement.

(2) Demand is effective upon hand delivery to the last known address, three days after deposit by mail (even if the demand is returned as undeliverable), or upon delivery by a designated delivery service to the last known address."

SECTION 4. G.S. 20-102 reads as rewritten:

"**§ 20-102. Report of stolen and recovered motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall ~~immediately~~ report such theft to the Division. Any said officer upon receiving information that any vehicle, which he

has previously reported as stolen, has been recovered, shall ~~immediately~~ report the fact of such recovery to the Division."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ **20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer, upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167, shall report the failure to the National Crime Information Center. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Crime Information Center. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:31 p.m. on the 12th day of July, 2005.

H.B. 673 **Session Law 2005-183**

AN ACT TO ESTABLISH NORTH CAROLINA AS A MEMBER OF THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT, TO REQUIRE THE COMMISSIONER OF INSURANCE TO REPORT WHETHER CONTINUED PARTICIPATION BY THIS STATE IN THE COMPACT IS IN THE BEST INTEREST OF THE CITIZENS AND POLICYHOLDERS OF THIS STATE, AND TO PROVIDE A SUNSET FOR PARTICIPATION IN THE COMPACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding the following new Article to read:

"Article 91.

"Interstate Insurance Product Regulation Compact Act.

"§ **58-91-1. Preamble.**

The Interstate Insurance Product Regulation Compact Act is intended to help states join together to establish an interstate compact to regulate designated insurance products.

Pursuant to terms and conditions of this Article, this State seeks to join with other states and establish the Interstate Insurance Product Regulation Compact and thus become a member of the Interstate Insurance Product Regulation Commission. The Commissioner of Insurance, or the Commissioner's designee, is hereby designated to serve as the representative of this State to the Commission.

"§ **58-91-5. Purposes.**

The purposes of this Compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.
(2) To develop uniform standards for insurance products covered under the Compact.
(3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.
(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.
(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact.
(6) To create the Interstate Insurance Product Regulation Commission.
(7) To perform these and any other related function as may be consistent with the state regulation of the business of insurance.

"§ **58-91-10. Definitions.**

For purposes of this Article and the Compact:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.
(2) "Bylaws" means those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.
(3) "Compacting state" means any state which has enacted this Compact legislation and which has not withdrawn or been terminated pursuant to G.S. 58-91-70.
(4) "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.
(5) "Commissioner" means the chief insurance regulatory official of a state, including a commissioner, superintendent, director, or administrator.
(6) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an foreign insurer, its state of entry.
(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this Article.
(8) "Member" means the person chosen by a compacting state as its representative to the Commission, or that person's designee.
(9) "Noncompacting state" means any state which is not at the time a compacting state.
(10) "Operating procedures" means procedures promulgated by the Commission implementing a rule, uniform standard, or a provision of this Compact.
(11) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and

made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an Insurer is authorized to issue.

(12) "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission, including a uniform standard developed pursuant to G.S. 58-91-35, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the compacting states.

(13) "State" means any state, district, or territory of the United States of America.

(14) "Third-party filer" means an entity that submits a product filing to the Commission on behalf of an insurer.

(15) "Uniform standard" means a standard adopted by the Commission for a product line, pursuant to G.S. 58-91-35, and shall include all of the product requirements in aggregate. Each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product, and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

"§ **58-91-15. Establishment of the Commission and venue.**

(a) The compacting states hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to G.S. 58-91-20, the Commission shall have the power to develop uniform standards for product lines, receive, and provide prompt review of products filed with the Commission, and give approval to those product filings satisfying applicable uniform standards. It is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and that filing shall be subject to the laws of the state where filed.

(b) The Commission is a body corporate and politic and an instrumentality of the compacting states.

(c) The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

(d) Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located.

"§ **58-91-20. Powers of the Commission.**

The Commission shall have the following powers:

(1) To promulgate rules, pursuant to G.S. 58-91-35, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this Compact.

(2) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the Compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the Commission. Notwithstanding this subdivision, a compacting state shall have the right to opt out of a uniform standard pursuant to

G.S. 58-91-35, to the extent and in the manner provided in this Compact, and any uniform standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the uniform standards established by the Commission for long-term care insurance products.

(3) To receive and review in an expeditious manner products filed with the Commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where the approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the Compact.

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the Commission and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the Commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the Compact.

(5) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the Commission.

(6) To promulgate operating procedures pursuant to G.S. 58-91-35 which shall be binding in the compacting states to the extent and in the manner provided in this Compact.

(7) To bring and prosecute legal proceedings or actions in its name as the Commission except that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) To establish and maintain offices.

(10) To purchase and maintain insurance and bonds.

(11) To borrow, accept, and contract for services of personnel, including employees of a compacting state.

(12) To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give

them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. At all times the Commission shall strive to avoid any appearance of impropriety.

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. At all times the Commission shall strive to avoid any appearance of impropriety.

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

(18) To provide for dispute resolution among compacting states.

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this Compact.

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments.

(21) To establish a budget and make expenditures.

(22) To borrow money.

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

(24) To provide and receive information from, and to cooperate with, law enforcement agencies.

(25) To adopt and use a corporate seal.

(26) To perform any other functions that may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

"§ **58-91-25. Organization of the Commission.**

(a) Membership, Voting, and Bylaws. – Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own Commissioner.

Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the bylaws.

Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor of the uniform standard.

The Commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including:

(1) Establishing the fiscal year of the Commission.

(2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee.

(3) Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission.

(4) Providing reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission members, ensuring reasonable advance notice of each meeting and providing for the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and (ii) votes taken during the meeting.

(5) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission.

(6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Commission.

(7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

(8) Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment or reserving of all of its debts and obligations.

The Commission shall publish its bylaws in a convenient form and file a copy of the bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

(b) Management Committee, Officers and Personnel. – A Management Committee comprising no more than 14 members shall be established as follows:

(1) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the NAIC for the prior year.

(2) Four members from those compacting states with at least two percent (2%) of the market based on the premium volume described above,

other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(3) Four members from those compacting states with less than two percent (2%) of the market, based on the premium volume described above, with one selected from each of the four zone regions of the NAIC as provided in the bylaws.

(b1) The Management Committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the Commission in a manner consistent with the bylaws and purposes of the Commission.

(2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard, except that that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the Management Committee.

(3) Overseeing the offices of the Commission.

(4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Commission.

The Commission shall elect annually officers from the Management Committee, with each having the authority and duties specified in the bylaws.

The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for a period of time, upon the terms and conditions, and for the compensation deemed appropriate by the Commission. The executive director shall serve as secretary to the Commission, but shall not be a member of the Commission. The executive director shall hire and supervise any other staff authorized by the Commission.

(c) Legislative and Advisory Committees. – A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee. The manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the Commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the Management Committee shall consult with and report to the legislative committee.

The Commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

The Commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(d) Corporate Records of the Commission. – The Commission shall maintain its corporate books and records in accordance with the bylaws.

(e) Qualified Immunity, Defense, and Indemnification. – The members, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for

damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities except that nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities as long as the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct. Nothing in this subsection shall be construed to prohibit that person from retaining his or her own counsel.

The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities as long as the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

"§ **58-91-30. Meetings; acts of the Commission.**

(a) The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(b) Each member of the Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Commission. A member shall vote in person or by any means provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

"§ **58-91-35. Rules and operating procedures: rule-making functions of the Commission and opting out of uniform standards.**

(a) Rule-Making Authority. – The Commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this Article, or the powers granted in this Article, then that action by the Commission shall be invalid and have no force and effect.

(b) Rule-Making Procedure. – Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a uniform standard, the Commission shall give written notice to the relevant state legislative committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The

Commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(c) Effective Date and Opt Out of a Uniform Standard. – A uniform standard shall become effective 90 days after its promulgation by the Commission or such later date as the Commission may determine except that a compacting state may opt out of a uniform standard as provided in this Article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments to the rules and operating procedures, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(d) Opt Out Procedure. – A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must (i) give written notice to the Commission no later than 10 business days after the uniform standard is promulgated, or at the time the state becomes a compacting state and (ii) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The Commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

(1) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this Article; and

(2) The presumption that a uniform standard adopted by the Commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this Compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for the opt out in the enacted Compact, and the opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this Compact. The opt out shall be effective at the time of enactment of this Compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(e) Effect of Opt Out. – If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under G.S. 58-91-70 for withdrawals.

(f) Stay of Uniform Standard. – If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the Commission, at least 15 days

before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended by the Commission. A stay shall not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the Commission upon notice that the rule-making process has been terminated.

(g) Not later than 30 days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure. The filing of a petition pursuant to this subsection shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the Commission's authority.

"§ **58-91-40. Commission records and enforcement.**

(a) The Commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the Commission. Disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement. Except as otherwise expressly provided in this Article, the Commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the Commission shall remain confidential after the information is provided to any commissioner.

(c) The Commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The Commission shall notify any noncomplying compacting state in writing of its noncompliance with Commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in G.S. 58-91-70.

(d) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise that person's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the Compact is governed by the following provisions:

(1) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the Commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the Compact except upon a final order of the Commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the Commission.

(2) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the Compact relating to the content of an advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this subdivision does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the Commission's action on the requests.

"§ **58-91-45. Dispute resolution.**

The Commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the Commission shall promulgate an operating procedure providing for resolution of those disputes.

"§ **58-91-50. Product filing and approval.**

(a) Insurers and third-party filers seeking to have a product approved by the Commission shall file the product with, and pay applicable filing fees to, the Commission. Nothing in this Article shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and the filing shall be subject to the laws of the states where filed.

(b) The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission rules and operating procedures. Notwithstanding any provision in this Article to the contrary, the Commission shall promulgate rules to establish conditions and procedures under which the Commission will provide public access to product filing information. In establishing rules, the Commission shall consider the interests of the public in having access to the information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(c) Any product approved by the Commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

"§ **58-91-55. Review of Commission decisions regarding filings.**

(a) Not later than 30 days after the Commission has given notice of a disapproved product or advertisement filed with the Commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate rules to establish procedures for appointing review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a product or advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with G.S. 58-91-15(d).

(b) The Commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (a) of this section.

"§ **58-91-60. Finance.**

(a) The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

(b) The Commission shall collect a filing fee from each insurer and third-party filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

(c) The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in G.S. 58-91-35.

(d) The Commission shall be exempt from all taxation in and by the compacting states.

(e) The Commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(f) The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the Commission, shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an annual report to the Governor and legislature of the compacting states, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential, and those materials may be shared with the commissioner of any compacting state upon request except that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(g) No compacting state shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

"§ **58-91-65. Compacting states; effective date; amendment.**

(a) Any State is eligible to become a compacting state.

(b) The Compact shall become effective and binding upon legislative enactment of the Compact into law by two compacting states except that the Commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the Commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than forty percent (40%) of the premium volume for life insurance,

annuity, disability income, and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the Compact into law by that state.

(c) Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Commission and the compacting states unless and until all compacting states enact the amendment into law.

"**§ 58-91-70. Withdrawal; default; termination.**

(a) Withdrawal. – Once effective, the Compact shall continue in force and remain binding upon each and every compacting state though a compacting state may withdraw from the Compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in this subsection.

The commissioner of the withdrawing state shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the withdrawing state.

The Commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of the notice.

The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the withdrawing state. The Commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the Compact.

(b) Default. – If the Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this Compact on the defaulting state shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in Commission rules. The Commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Commission, the defaulting state shall be terminated from the Compact and all rights,

privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.

Product approvals by the Commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (a) of this section.

Reinstatement following termination of any compacting state requires a reenactment of the Compact.

(c) Dissolution of Compact. – The Compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the Compact to one compacting state.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

"§ **58-91-75. Severability; construction.**

(a) The provisions of this Compact shall be severable; and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

(b) The provisions of this Compact shall be liberally construed to effectuate its purposes.

"§ **58-91-80. Binding effect of Compact; other laws.**

(a) Other Laws. – Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in subsection (b) of this section.

For any product approved or certified to the Commission, the rules, uniform standards, and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the Commission's authority, any rule, uniform standard, or other requirement of the Commission that governs the content of the advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

All insurance products filed with individual states shall be subject to the laws of those states.

(b) Binding Effect of This Compact. – All lawful actions of the Commission, including all rules and operating procedures promulgated by the Commission, are binding upon the compacting states.

All agreements between the Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the Commission shall be

ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this Compact becomes effective."

SECTION 2. The Commissioner may submit interim reports to the General Assembly as deemed appropriate by the Commissioner on the effectiveness of the State's participation in the Compact. No later than January 1, 2009, the Commissioner shall submit a final report to the General Assembly on the effectiveness of the State's participation in the Compact. The report may include consideration of any issues deemed relevant by the Commissioner to the State's participation in the Compact and may include recommended legislative proposals related to the Compact. The report shall include the Commissioner's recommendation to the General Assembly as to whether the State's continued participation in the Compact is in the best interest of the citizens of this State.

SECTION 3. This act becomes effective October 1, 2005, and expires October 1, 2009.

In the General Assembly read three times and ratified this the 6th day of July, 2005.

Became law upon approval of the Governor at 8:32 p.m. on the 12th day of July, 2005.

S.B. 1058 **Session Law 2005-184**

AN ACT TO EXPAND THE SCOPE OF THE CRIMINAL OFFENSE OF ASSAULT ON AN ASSISTANCE ANIMAL AND TO REQUIRE RESTITUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 reads as rewritten:

"§ **14-163.1. Assaulting a law enforcement agency animal or an assistance animal.**

(a) The following definitions apply in this section:

(1) Assistance animal. – An animal that is trained and may be used to assist a ~~"handicapped person~~ "person with a disability" as defined in ~~G.S. 168-1.~~ G.S. 168A-3. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a ~~handicapped~~ person with a disability as provided in Article 1 of Chapter 168 of the General Statutes.

(2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

(3) ~~Physical harm.~~Harm. – Any injury, illness, or other physiological ~~impairment.~~ impairment; or any behavioral impairment that impedes or interferes with duties performed by a law enforcement agency animal or an assistance animal.

(4) Serious ~~physical~~ harm. ~~Physical harm~~ Harm that does any of the following:

a. Creates a substantial risk of death.

b. Causes maiming or causes substantial loss or impairment of bodily function.

c. Causes acute pain of a duration that results in substantial suffering.

d. Requires retraining of the law enforcement agency animal or assistance animal.

e. Requires retirement of the law enforcement agency animal or assistance animal from performing duties.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause serious ~~physical~~ harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause ~~physical~~ harm to the animal is guilty of a Class 1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency animal or assistance animal is guilty of a Class 2 misdemeanor.

(d1) A defendant convicted of a violation of this section shall be ordered to make restitution to the person with a disability, or to a person, group, or law enforcement agency who owns or is responsible for the care of the law enforcement agency animal for any of the following as appropriate:

(1) Veterinary, medical care, and boarding expenses for the assistance animal or law enforcement animal.

(2) Medical expenses for the person with the disability relating to the harm inflicted upon the assistance animal.

(3) Replacement and training or retraining expenses for the assistance animal or law enforcement animal.

(4) Expenses incurred to provide temporary mobility services to the person with a disability.

(5) Wages or income lost while the person with a disability is with the assistance animal receiving training or retraining.

(6) The salary of the law enforcement agency animal handler as a result of the lost services to the agency during the time the handler is with the law enforcement agency animal receiving training or retraining.

(7) Any other expense reasonably incurred as a result of the offense.

(e) This section shall not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section.

(g) Nothing in this section shall affect any civil remedies available for violation of this section."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:33 p.m. on the 12th day of July, 2005.

H.B. 1163 **Session Law 2005-185**

AN ACT TO PROVIDE THAT PROVISIONS IN MOTOR CARRIER FREIGHT TRANSPORTATION CONTRACTS THAT HOLD HARMLESS THE SHIPPER FOR THE SHIPPER'S NEGLIGENCE OR INTENTIONAL ACTS ARE VOID.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-212. Indemnity agreements in motor carrier transportation contracts.**

(a) A provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omission of the promisee is against the public policy of this State and is void and unenforceable.

(b) The following definitions apply in this section:

(1) Motor carrier transportation contract. – A contract, agreement, or understanding covering at least one of the following:

a. The transportation of property for compensation or hire by the motor carrier.

b. Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire.

c. A service incidental to activity described in sub-subdivision a. or b. of this subdivision, including storage of property.

(2) Promisee. – The person with whom the motor carrier enters into a motor carrier transportation contract and any agents, employees, servants, or independent contractors who are directly responsible to that person, except for motor carriers party to a motor carrier transportation contract with the person, and the motor carrier's agents, employees, servants, or independent contractors directly responsible to the motor carrier.

(c) Nothing contained in this section effects a provision, clause, covenant, or agreement where the motor carrier indemnifies or holds harmless the contract's promisee against liability for damages to the extent that the damages were caused by and resulted from the negligence of the motor carrier, its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.

(d) Notwithstanding the other provisions contained in this section, the term 'motor carrier transportation contract', as defined in this section, shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, or other agreements providing for the interchange, use or possession of intermodal chassis, containers, trailers, or other intermodal equipment that contain substantially the same indemnity provision as the provision contained in the Uniform Intermodal Interchange and Facilities Access Agreement."

SECTION 2. This act becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:34 p.m. on the 12th day of July, 2005.

S.B. 3 **Session Law 2005-186**

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF NURSING TO REQUIRE APPLICANTS TO SUBMIT EVIDENCE OF CONTINUING COMPETENCY UPON LICENSE RENEWAL OR REINSTATEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-171.23(b) is amended by adding a new subdivision to read:

"(b) Duties, powers. The Board is empowered to:

…

(20) Adopt rules requiring an applicant to submit to the Board evidence of the applicant's continuing competence in the practice of nursing at the time of license renewal or reinstatement.

…."

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

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:35 p.m. on the 12th day of July, 2005.

H.B. 1319 **Session Law 2005-187**

AN ACT TO AMEND VARIOUS PROVISIONS UNDER THE FAMILY LAW ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 50 of the General Statutes is amended by adding two new sections to read:

"**§ 50-42.1. Nonwaivable provisions.**

(a) Except as otherwise provided in subsections (b) and (c) of this section or in this Article, a party to an agreement to arbitrate or an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law. Any waiver or agreement must be in writing.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 50-42, 50-49(a), (b), or (c), 50-58, or 50-59.

(2) Agree to unreasonably restrict the right to notice of the initiation of an arbitration proceeding under G.S. 50-42.2(a) or (b).

(3) Agree to unreasonably restrict the right to disclosure of any facts by a neutral arbitrator under G.S. 50-45.1.

(c) Except as otherwise provided in this Article, a party to an agreement to arbitrate or an arbitration proceeding may not waive, or the parties shall not vary the

effect of, the requirements of this section or G.S. 50-43, 50-45(f), 50-52 through 50-57, or 50-60 through 50-62.

(d) Any waiver contrary to this section shall not be effective but shall not have the effect of voiding the agreement to arbitrate.

"§ **50-42.2. Notice.**

(a) A person initiates an arbitration proceeding by giving written notice to the other parties to the agreement to arbitrate in the manner in which the parties have agreed or, in the absence of agreement, by certified or registered mail, return receipt requested, or by service as authorized for the commencement of a civil action under the North Carolina Rules of Civil Procedure.

(b) Unless a person objects to the lack or insufficiency of notice not later than the beginning of the hearing, the person's appearance at the hearing waives the objection.

(c) Except as otherwise provided in this Article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course of business, regardless of whether the person acquires knowledge of the notice.

(d) A person has notice if the person has knowledge of the notice or has received notice.

(e) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of communications."

SECTION 2. G.S. 50-43(b) reads as rewritten:

"(b) Upon the application of a party, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. This issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the court shall order a stay if it finds for the moving party. If the court finds for the opposing party, the court shall order the parties to go to arbitration. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court unless the court otherwise orders."

SECTION 3. G.S. 50-44 is amended by adding the following new subsection to read:

"(j) A party does not waive the right to arbitrate by proceeding under this section."

SECTION 4. G.S. 50-45 reads as rewritten:

"§ **50-45. Appointment of arbitrators; rules for conducting the arbitration.**

(a) Unless the parties ~~agree otherwise,~~otherwise agree in writing, a single arbitrator shall be chosen by the parties to arbitrate all matters in dispute.

(b) If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. The agreement may provide for appointing one or more arbitrators. Upon the application of a party, the court shall appoint arbitrators in any of the following situations:

(1) The method agreed upon by the parties in the arbitration agreement fails or for any reason cannot be followed.

(2) An arbitrator who has already been appointed fails or is unable to act, and a successor has not been chosen by the parties.

(3) The parties cannot agree on an arbitrator.

(c) Arbitrators appointed by the court have all the powers of those arbitrators specifically named in the agreement. In appointing arbitrators, a court shall consult with prospective arbitrators as to their availability and shall refer to each of the following:

(1) The positions and desires of the parties.

(2) The issues in dispute.

(3) The skill, substantive training, and experience of prospective arbitrators in those issues, including their skill, substantive training, and experience in family law issues.

(4) The availability of prospective arbitrators.

(d) The parties may agree in writing to employ an established arbitration institution to conduct the arbitration. If the agreement does not provide a method for appointment of arbitrators and the parties cannot agree on an arbitrator, the court may appoint an established arbitration institution the court considers qualified in family law arbitration to conduct the arbitration.

(e) The parties may agree in writing on rules for conducting the arbitration. If the parties cannot agree on rules for conducting the arbitration, the arbitrators shall select the rules for conducting the arbitration after hearing all parties and taking particular reference to model rules developed by arbitration institutions or similar sources. If the arbitrators cannot decide on rules for conducting the arbitration, upon application by a party, the court may order use of rules for conducting the arbitration, taking particular reference to model rules developed by arbitration institutions or similar sources.

(f) Arbitrators and established arbitration institutions, whether chosen by the parties or appointed by the court, have the same immunity as judges from civil liability for their conduct in the arbitration.

(g) "Arbitration institution" means any neutral, independent organization, association, agency, board, or commission that initiates, sponsors, or administers arbitration proceedings, including involvement in appointment of arbitrators.

(h) The court may award ~~costs, as provided in G.S. 50-51(f),~~ costs under G.S. 50-51(f) in connection with applications and other proceedings under this section."

SECTION 5. Article 3 of Chapter 50 of the General Statutes is amended by adding a new section to read:

"§ **50-45.1. Disclosure by arbitrator.**

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding.

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the

arbitrator based upon the fact disclosed, the objection may be grounds for vacating an award made by the arbitrator under G.S. 50-54(a)(2).

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court may vacate an award pursuant to G.S. 50-54(a)(2).

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 50-54(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration institution or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on those grounds pursuant to G.S. 50-54(a)(2)."

SECTION 6. G.S. 50-46 reads as rewritten:

"§ **50-46. Majority action by arbitrators.**

The arbitrators' powers shall be exercised by a majority unless otherwise provided by the parties' written arbitration agreement or this Article."

SECTION 7. G.S. 50-47 reads as rewritten:

"§ **50-47. Hearing.**

Unless otherwise provided by the parties' written agreement:

(1) The arbitrators shall appoint a time and place for the hearing and notify the parties or their counsel by personal service or by registered or certified mail, return receipt requested, not less than five days before the hearing. Appearance of a party at the hearing waives any claim of deficiency of notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the written agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. Upon application of a party, the court may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(3) All the arbitrators shall conduct the hearing, but a majority may determine any question and may render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(4) Upon request of any party or at the election of any arbitrator, the arbitrators shall cause to be made a record of testimony and evidence introduced at the hearing. The arbitrators shall decide how the cost of the record will be apportioned."

SECTION 8. G.S. 50-50 is repealed.

SECTION 9. Article 3 of Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-50.1. Consolidation.**

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement or arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if all of the following apply:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same parties or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third party.

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions.

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings.

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court shall not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation."

SECTION 10. G.S. 50-51 reads as rewritten:

"§ **50-51. Award; costs.**

(a) The award shall be in writing, dated and signed by the arbitrators joining in the award, with a statement of the place where the arbitration was conducted and the place where the award was made. Where there is more than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason for any omitted signature shall be stated. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the parties' written agreement. Time of delivery shall be computed from the date of personal delivery or date of mailing.

(b) Unless the parties ~~agree otherwise,~~otherwise agree in writing, the award shall state the reasons upon which it is based.

(c) Unless the parties ~~agree otherwise,~~otherwise agree in writing, the arbitrators may award interest as provided by law.

(d) The arbitrators in their discretion may award specific performance to a party requesting an award of specific performance when that would be an appropriate remedy.

(e) Unless the parties ~~agree otherwise,~~otherwise agree in writing, the arbitrators may not award punitive damages. If arbitrators award punitive damages, they shall state the award in a record and shall specify facts justifying the award and the amount of the award attributable to punitive damages.

(f) Costs:

(1) Unless the parties ~~otherwise agree,~~otherwise agree in writing, awarding of costs of an arbitration shall be in the arbitrators' discretion.

(2) In making an award of costs, the arbitrators may include any or all of the following as costs:

a. Fees and expenses of the arbitrators, expert witnesses, and translators;

b. Fees and expenses of ~~counsel~~ counsel, to the extent allowed by law unless the parties otherwise agree in writing, and of an institution supervising the arbitration, if any;
c. Any other expenses incurred in connection with the arbitration proceedings;
d. Sanctions awarded by the arbitrators or the court, including those provided by N.C.R. Civ. P. 11 and 37; and
e. Costs allowed by Chapters 6 and 7A of the General Statutes.

(3) In making an award of costs, the arbitrators shall specify each of the following:
a. The party entitled to costs;
b. The party who shall pay costs;
c. The amount of costs or method of determining that amount; and
d. The manner in which costs shall be paid.

(g) An award shall be made within the time fixed by the agreement. If no time is fixed by the agreement, the award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrators of his or her objection prior to delivery of the award to that party."

SECTION 11. G.S. 50-52 reads as rewritten:

"§ **50-52. Change of award by arbitrators.**

(a) On a party's application to the arbitrators or, if an application to the court is pending under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the court under the conditions ordered by the court, the arbitrators may modify or correct the award for any of the following reasons:

(1) ~~upon~~ Upon grounds stated in G.S. 50-55(a)(1) and (a)(3).~~subdivisions (1) and (3) of subsection (a) of G.S. 50-55,~~
(2) If the arbitrators have not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding.
(3) ~~or~~ To clarify the award.

(b) The application shall be made within 20 days after delivery of the award to the opposing ~~party, stating~~ party. The application must include a statement that the opposing party must serve any objections to the ~~application, if any,~~ application within 10 days from notice. An award modified or corrected under this section is subject to the provisions of G.S. 50-51(a) through G.S. 50-51(f) and G.S. 50-53 through G.S. 50-56."

SECTION 12. G.S. 50-53 reads as rewritten:

"§ **50-53. Confirmation of award.**

(a) Unless the parties ~~agree otherwise,~~otherwise agree in writing that part or all of an award shall not be confirmed by the court, upon a party's application, the court shall confirm an award, ~~unless~~ except when within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56.

(b) The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings."

SECTION 13. G.S. 50-54(d) reads as rewritten:

"(d) The court shall confirm the award and may award costs of the application and subsequent proceedings under G.S. 50-51(f) if ~~If~~ an application to vacate is ~~denied~~

~~and~~denied, no motion to modify or correct the award is pending, and the parties have not agreed in writing that the award shall not be confirmed under G.S. 50-53. ~~the court shall confirm the award and may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.~~"

SECTION 14. G.S. 50-56 reads as rewritten:

"§ **50-56. Modification of award for alimony, postseparation support, child support, or child custody based on substantial change of circumstances.**

(a) A court or the arbitrators may modify an award for postseparation support, alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and G.S. 50-16.9 ~~in accordance with procedures stated~~ as provided in subsections (b) through (f) of this section.

(b) Unless the parties have agreed in writing that an award for postseparation support or alimony shall be nonmodifiable, an award by arbitrators for postseparation support or alimony under G.S. 50-16.2A, 50-16.3A, 50-16.4, or 50-16.7 may be modified if a court order for alimony or postseparation support could be modified ~~pursuant to~~ under G.S. 50-16.9.

(c) An award by arbitrators for child support or child custody may be modified if a court order for child support or child custody could be modified ~~pursuant to~~ under G.S. 50-13.7.

(d) If an award for modifiable postseparation support or alimony, or an award for child support or child custody, has not been confirmed ~~pursuant to~~ under G.S. 50-53, upon the parties' written agreement these matters may be submitted to arbitrators chosen by the parties ~~as provided in G.S. 50-45, in which case~~ under G.S. 50-45. G.S. 50-52 through G.S. 50-56 shall apply to this modified award.

(e) If an award for modifiable postseparation support or alimony, or an award for child support or child custody has been confirmed pursuant to G.S. 50-53, upon the parties' agreement in writing and joint motion, the court may remit these matters to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(f) Except as otherwise provided in this section, the provisions of G.S. 50-55 apply to modifications or corrections of awards for postseparation support, alimony, child support, or child custody."

SECTION 15. G.S. 50-57 reads as rewritten:

"§ **50-57. Orders or judgments on award.**

(a) Upon granting an order confirming, modifying, or correcting an award, an order or judgment shall be entered in conformity with the order and docketed and enforced as any other order or judgment. The court may award costs, as provided in G.S. 50-51(f), of the application and of proceedings subsequent to the application and disbursements.

(b) Notwithstanding G.S. 7A-109, 7A-276.1, or 132-1 or similar law, the court, in its discretion, may order that any arbitration award or order or any judgment or court order entered as a court order or judgment under this Article, or any part of the arbitration award or order or judgment or court order, be sealed, to be opened only upon order of the court upon good cause shown. Upon good cause shown, the court may order resealing of the opened arbitration awards or orders or judgments or court orders. The court, in its discretion, may order that any arbitration award or order or any judgment or court order entered as a court order or judgment under this Article, or any part of the arbitration award or order or judgment or court order, be redacted, the redactions to be opened only upon order of the court upon good cause shown. Upon

good cause shown, the court may order redaction of the previously redacted arbitration awards or orders or judgments or court orders opened under the court's order."

SECTION 16. G.S. 50-58 reads as rewritten:

"§ **50-58. Applications to the court.**

Except as otherwise provided, an application to a court under this Article shall be by motion and shall be heard in the manner and upon notice provided by law or rule of court for making and hearing motions in civil actions. Unless the parties ~~agree otherwise,~~otherwise agree in writing, notice of an initial application for an order shall be served in the manner provided by law for service of summons in civil actions."

SECTION 17. G.S. 50-59 reads as rewritten:

"§ **50-59. Court; ~~jurisdiction.~~jurisdiction; other definitions.**

(a) The term "court" means a court of competent jurisdiction of this State. Making an agreement in this State described in G.S. 50-42 or any agreement providing for arbitration in this State or under its laws confers jurisdiction on the court to enforce the agreement under this Article and to enter judgment on an award under the agreement.

(b) The term 'person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity."

SECTION 18. G.S. 50-61 reads as rewritten:

"§ **50-61. Article not retroactive.**

This Article applies to agreements made on or after October 1, 1999, unless parties by separate written agreement after that date state that this Article shall apply to agreements dated before October 1, 1999."

SECTION 19. G.S. 50-62 reads as rewritten:

"§ **50-62. Construction; uniformity of interpretation.**

(a) Certain provisions of this Article have been adapted from the Uniform Arbitration Act formerly in force in this State, the Revised Uniform Arbitration Act in force in this State, the North Carolina International Commercial Arbitration and Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes. This Article shall be construed to effect its general purpose to make uniform provisions of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes.

(b) The provisions of this Article governing the legal effect, validity, or enforceability of electronic records or electronic signatures, or of contracts performed with the use of these records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing these electronic records or electronic signatures."

SECTION 20. This act becomes effective October 1, 2005, and applies to agreements made on or after that date. This act also applies to agreements to arbitrate made before October 1, 2005, if all parties to the agreement or to the arbitration proceeding agree that this act applies.

In the General Assembly read three times and ratified this the 5th day of July, 2005.

Became law upon approval of the Governor at 8:37 p.m. on the 12th day of July, 2005.

S.B. 335 **Session Law 2005-188**

AN ACT AMENDING THE CHARTER OF THE TOWN OF CORNELIUS TO ALLOW THE BOARD OF COMMISSIONERS TO REMOVE MEMBERS FOR CAUSE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3.3 of the Charter of the Town of Cornelius, being Chapter 288 of the 1971 Session Laws, as amended by Town Ordinance No. 2002-00266, adopted pursuant to G.S. 160A-101, reads as rewritten:

"Sec. 3.3. Terms; Qualifications; Vacancies. (a) The Mayor shall serve for a term of four years and members of the Board of Commissioners shall serve for terms of four years, beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this ~~Charter; provided, they shall serve until their successors are elected and qualify.~~Charter. The Mayor and Commissioners shall serve until: (i) their successors are elected and qualified; (ii) they resign; (iii) they become ineligible to hold office; or (iv) they are removed from office in accordance with subsection (b1) of this section.

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

(b1) The Mayor and Commissioners shall be expected and required to attend all regular meetings of the Board of Commissioners except for occasional, unavoidable conflicts. However, the Mayor and Commissioners shall attend at least sixty percent (60%) of all regular Board meetings calculated on a rolling 12-month basis. Participation in a meeting by phone that has been approved pursuant to Board policy shall be counted as being absent under this section, although the participation may be considered as being in attendance for other purposes. Upon receipt of a complaint alleging a violation under this section, the Board shall call a hearing on the matter. The person to be proceeded against shall have at least 10 days' notice in writing of the motion to remove him, accompanied by a copy of the charges alleged as the grounds for the proposed removal. He shall have the right to be heard in person or by counsel in his defense. At the hearing, the Board may also hear from members of the public. Upon finding by a preponderance of the evidence that a violation has occurred, the Board may, by a majority vote, remove the Mayor or Commissioner from office or impose a lesser sanction, including censure or reprimand. The accused Mayor or Commissioner may vote in a proceeding only in the case of a tie.

(b2) The Mayor or a Commissioner shall not be considered absent from a regular meeting of the Board of Commissioners if the Mayor's or Commissioner's failure to attend is due to any of the following reasons:

(1) Personal illness or the illness or death of an immediate family member (spouse, children, grandchildren, parents, grandparents, or siblings).
(2) Military service.
(3) Activities necessary to the performance of the official duties of the Mayor or Commissioner.

The burden shall be on the Mayor or Commissioner to present documentation in a hearing held pursuant to subsection (b1) of this section that supports an authorized reason for nonattendance.

(c) In the event a vacancy occurs in the office of Mayor or Commissioner, the Board of Commissioners shall ~~by majority vote~~ appoint some qualified person to fill the same ~~for the remainder of the unexpired term.~~ in accordance with G.S. 160A-63.

(d) In the case of a conflict between this section and any other provision of this Charter, a Town ordinance, or other statute or common law, this section shall prevail to the extent of the conflict."

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

In the General Assembly read three times and ratified this the 13th day of July, 2005.

Became law on the date it was ratified.

H.B. 288 **Session Law 2005-189**

AN ACT TO AMEND THE LAW CONCERNING WHAT THE DRIVER OF A MOTOR VEHICLE SHALL DO UPON APPROACH OF AN EMERGENCY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157 reads as rewritten:

"§ **20-157. Approach of ~~police,~~ law enforcement, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near ~~police,~~ law enforcement, fire department, or rescue squad vehicle or ambulance.**

(a) Upon the approach of any ~~police~~ law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a ~~police~~ law enforcement or traffic officer until ~~police~~ law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall ~~not~~ be negligence per se. Violation of this subsection is a Class 2 misdemeanor.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

(c) Outside of the corporate limits of any city or town it shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than 400 feet or to drive into or park such vehicle within a space of 400 feet from where fire apparatus has stopped in answer to a fire alarm.

(d) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.

(e) It shall be unlawful for the driver of a vehicle, other than one on official business, to park and leave standing such vehicle within 100 feet of ~~police~~ law enforcement or fire department vehicles, public or private ambulances, or rescue squad emergency vehicles which are engaged in the investigation of an accident or engaged in rendering assistance to victims of such accident.

(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that has been called to the scene by a motorist or a law enforcement officer, is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall ~~not~~ be negligence per se.

(g) Except as provided in subsections (a), (h), and (i) of this section, violation of this section shall be an infraction punishable by a fine of two hundred fifty dollars ($250.00).

(h) A person who violates this section and causes damage to property in the immediate area of the authorized emergency vehicle or public service vehicle in excess of five hundred dollars ($500.00), or causes injury to a law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle is guilty of a Class 1 misdemeanor.

(i) A person who violates this section and causes serious injury or death to a law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle is guilty of a Class I felony. The Division may suspend, for up to six months, the drivers license of any person convicted under this subsection. If the Division suspends a person's license under this subsection, a judge may allow the licensee a limited driving privilege for a period not to exceed the period of suspension, provided the person's license has not also been revoked or suspended under any other

provision of law. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)."

SECTION 2. This act becomes effective July 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 11:16 a.m. on the 14th day of July, 2005.

S.B. 981 **Session Law 2005-190**

AN ACT TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION: (1) TO STUDY WATER QUALITY IN DRINKING WATER SUPPLY RESERVOIRS IN THE STATE, (2) TO ADOPT NUTRIENT CONTROL CRITERIA FOR DRINKING WATER SUPPLY RESERVOIRS, (3) TO DEVELOP AND IMPLEMENT A NUTRIENT MANAGEMENT STRATEGY FOR CERTAIN DRINKING WATER SUPPLY RESERVOIRS THAT ARE IMPAIRED OR THAT MAY BECOME IMPAIRED WITHIN FIVE YEARS, (4) NOT TO MAKE ANY NEW OR INCREASED NUTRIENT LOADING ALLOCATION TO ANY IMPAIRED DRINKING WATER SUPPLY RESERVOIR UNTIL RULES TO IMPLEMENT A NUTRIENT MANAGEMENT STRATEGY FOR THAT RESERVOIR BECOME EFFECTIVE, AND (5) TO REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION ON PROGRESS IN DEVELOPING AND IMPLEMENTING NUTRIENT MANAGEMENT STRATEGIES FOR DRINKING WATER SUPPLY RESERVOIRS WITH IMPAIRED WATER QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings. – The General Assembly finds that:

(1) Drinking water supply reservoirs are an essential source of water needed to meet municipal, industrial, and agricultural needs.

(2) Drinking water supply reservoirs provide recreational opportunities and wildlife habitat and, if properly managed, improve water quality.

(3) Management and protection of the quality and quantity of water in drinking water supply reservoirs are essential to the economic vitality of North Carolina.

(4) Excessive nutrients are a major source of impairment of water quality in drinking water supply reservoirs.

(5) It would be beneficial for the State to study the condition of drinking water supply reservoirs and to develop nutrient control criteria to prevent drinking water supply reservoirs from becoming impaired.

(6) It would be beneficial for the State to develop calibrated nutrient response models and nutrient management strategies to ensure that drinking water supply reservoirs that are showing evidence of impairment are protected, as envisioned by Part 1 of Article 21 of Chapter 143 of the General Statutes and S.L. 1997-458, the Clean Water Responsibility and Environmentally Sound Policy Act.

SECTION 2.(a) Study of drinking water supply reservoirs. – The Environmental Management Commission shall study the water quality in the drinking

water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The Commission shall analyze existing data and report its findings and recommendations to the Environmental Review Commission by 1 May 2006.

SECTION 2.(b) Nutrient control criteria. – Based on the results of the study of drinking water supply reservoirs and an evaluation of current water quality standards, the Environmental Management Commission shall identify any nutrient control criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir in order to protect public health and other designated uses by 1 January 2009. The Commission shall adopt final nutrient control criteria for each drinking water supply reservoir by 1 May 2010. If the Commission finds that the nutrient control criteria for any drinking water supply reservoir are not being achieved, the Commission shall develop and implement a plan for enhanced water quality monitoring in that drinking water supply reservoir within one year of the determination. The Commission shall report its progress in implementing this section, including its findings and recommendations, to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

SECTION 3.(a) Applicability of section to certain reservoirs. – This section applies only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

(1) The reservoir serves a population greater than 300,000 persons.

(2) The Environmental Management Commission has classified all or any part of the water in the reservoir as a nutrient sensitive water (NSW).

(3) Water quality monitoring data indicates that water quality in the reservoir violates the chlorophyll A standard.

(4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002.

SECTION 3.(b) Temporary limitation on increased nutrient loading. – If the Environmental Management Commission determines either that water quality in all or in any part of a drinking water supply reservoir to which this section applies does not meet current water quality standards or that it is likely that water quality will not meet water quality standards at any time prior to 1 July 2010, the Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir. This limitation on new or increased nutrient loading allocation shall not be construed to prohibit a person who holds a permit for a wastewater discharge into a drinking water supply reservoir from purchasing a nutrient loading allocation from another person who holds a permit for a wastewater discharge into the same drinking water supply reservoir. This subsection expires with respect to a drinking water supply reservoir when permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective.

SECTION 3.(c) Nutrient management strategy. – The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2008. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the

measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy.

SECTION 3.(d) Eligibility under the Clean Water Revolving Loan and Grant Act. – The definitions set out in G.S. 159G-3 apply to this subsection. The operator of a wastewater treatment works that is owned by an agency of the State may apply for a loan or grant under Chapter 159G of the General Statutes on the same basis as any other applicant if the operator is a local government unit and if the local government unit operates the wastewater treatment works pursuant to a contract with the State agency that contemplates that the local government unit will eventually acquire ownership of the wastewater treatment works.

SECTION 3.(e) Implementation; rulemaking. – The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2008. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective.

SECTION 3.(f) Reports. – The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

SECTION 4. Other drinking water supply reservoirs. – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April 2006.

SECTION 5. Effective date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:41 p.m. on the 15th day of July, 2005.

S.B. 268 **Session Law 2005-191**

AN ACT TO ENACT "AEDIN'S LAW" TO DIRECT THE COMMISSIONER OF AGRICULTURE TO ADOPT RULES ESTABLISHING PERMITTING AND SANITATION REQUIREMENTS FOR ANIMAL EXHIBITIONS.

Whereas, contact with animals in public settings such as fairs, farm tours, and petting zoos provides opportunities for entertainment and education concerning animals and animal husbandry; and

Whereas, inadequate understanding of disease transmission can lead to infectious diseases among visitors, especially children, in these public settings; and

Whereas, in 2004, Aedin, a two-year-old child, and her family visited a petting zoo in North Carolina; and

Whereas, shortly after the visit to the petting zoo, Aedin contracted E. coli infection, was hospitalized for 36 days, and continues to suffer serious, lifelong complications from the infection and related Hemolytic Uremic Syndrome (HUS); and

Whereas, it is in the interest of the public health of this State to ensure that proper sanitation and other procedures are in place at fairs and animal exhibitions to address the potential for disease transmission; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The title to Part 4 of Article 45 of Chapter 106 of the General Statutes reads as rewritten:

"Part 4. Supervision of ~~Fairs.~~Fairs and Animal Exhibitions."

SECTION 1.(b) Part 4 of Article 45 of Chapter 106 of the General Statutes is amended by adding the following new section to read:

"**§ 106-520.3A. Animal exhibition regulation; permit required; civil penalties.**

(a) Title. – This section may be referred to as "Aedin's Law". This section provides for the regulation of animal exhibitions as they may affect the public health and safety.

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

(1) 'Animal' means only those animals that may transmit infectious diseases.

(2) 'Animal exhibition' means any sanctioned agricultural fair where animals are displayed on the exhibition grounds for physical contact with humans.

(c) Permit Required. – No animal exhibition may be operated for use by the general public unless the owner or operator has obtained an operation permit issued by the Commissioner. The Commissioner may issue an operation permit only after physical inspection of the animal exhibition and a determination that the animal exhibition meets the requirements of this section and rules adopted pursuant to this section. The Commissioner may deny, suspend, or revoke a permit on the basis that the exhibition does not comply with this section or rules adopted pursuant to this section.

(d) Rules. – For the protection of the public health and safety, the Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, and in consultation with the Division of Public Health of the Department of Health and Human Services, shall adopt rules concerning the operation of and issuance of permits for animal exhibitions. The rules shall include requirements for:

(1) Education and signage to inform the public of health and safety issues.
(2) Animal areas.
(3) Animal care and management.
(4) Transition and nonanimal areas.
(5) Hand-washing facilities.
(6) Other requirements necessary for the protection of the public health and safety.

(e) Educational Outreach. – The Department shall continue its consultative and educational efforts to inform agricultural fair operators, exhibitors, agritourism business operators, and the general public about the health risks associated with diseases transmitted by physical contact with animals.

(f) Civil Penalty. – In addition to the denial, suspension, or revocation of an operation permit, the Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this section or a rule adopted pursuant to this section. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) Legal Representation by Attorney General. – It shall be the duty of the Attorney General to represent the Department of Agriculture and Consumer Services or designate a member of the Attorney General's staff to represent the Department in all actions or proceedings in connection with this section."

SECTION 2. This act becomes effective October 1, 2005. The Department of Agriculture shall use funds available for the 2005-2007 fiscal biennium to implement this act.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:45 p.m. on the 15th day of July, 2005.

S.B. 679 **Session Law 2005-192**

AN ACT TO ADOPT A REVISED VERSION OF THE UNIFORM TRUST CODE FOR NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 36A of the General Statutes is recodified as Article 7 of Chapter 32 of the General Statutes. G.S. 36A-63, G.S. 36A-66.1, and Article 6 of Chapter 36A are recodified in Article 14 of Chapter 53 of the General Statutes as G.S. 53-163.1 through G.S. 53-163.7. The remainder of Chapter 36A of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 36C.**
"**North Carolina Uniform Trust Code.**
"Article 1.
"General Provisions and Definitions.

"**§ 36C-1-101. Short title.**

This Chapter may be cited as the North Carolina Uniform Trust Code.

"§ **36C-1-102. Scope.**

This Chapter applies to any express trust, private or charitable, with additions to the trust, wherever and however created. The term "express trust" includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk of superior court. This Chapter also applies to any trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. This Chapter does not apply to constructive trusts, resulting trusts, conservatorships, estates, trust accounts as defined in G.S. 53-146.2, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements under Chapter 33A of the General Statutes and Chapter 33B of the General Statutes, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

"§ **36C-1-103. Definitions.**

In this Chapter:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) "Beneficiary" means a person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).

(5) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) "General guardian" means a general guardian as that term is defined in G.S. 35A-1202(7).

(7) "Guardian of the estate" means a guardian of the estate as that term is defined in G.S. 35A-1202(9).

(8) "Guardian of the person" means a guardian of the person as that term is defined in G.S. 35A-1202(10).

(9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(10) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.

(11) "Jurisdiction", with respect to a geographic area, includes a state or country.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(13) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:
  a. Exercisable by a trustee and limited by an ascertainable standard; or
  b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
(14) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
(15) "Qualified beneficiary" means a living beneficiary who, on the date the beneficiary's qualification is determined:
  a. Is a distributee or permissible distributee of trust income or principal;
  b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to terminate; or
  c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
(16) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
(17) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
(18) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.
(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
(20) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.
(21) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.
(22) "Trustee" includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts.

"§ **36C-1-104. Knowledge.**

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:
(1) Has actual knowledge of it;
(2) Has received notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the employee's regular duties or the employee knows a matter involving the trust would be materially affected by the information.

"**§ 36C-1-105. Default and mandatory rules.**

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under G.S. 36C-10-1008;

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary;

(8) Periods of limitation for commencing a judicial proceeding;

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice; and

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

"**§ 36C-1-106. Common law of trusts; principles of equity.**

The common law of trusts and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another statute of this State.

"**§ 36C-1-107. Governing law.**

The meaning and effect of the terms of a trust are determined by:

(1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

"**§ 36C-1-108. Principal place of administration.**

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in, or a trustee is a resident of, the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction.

(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another jurisdiction in accordance with this subsection:

(1) If the trustee is transferring the trust's principal place of administration to another state, the trustee must provide written notice of the proposed transfer to the qualified beneficiaries of the trust not less than 60 days before initiating the transfer. If no qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice, the trustee may make the transfer. If a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice, the authority of the trustee to transfer the trust's principal place of administration in accordance with this section terminates.

(2) If the trustee is transferring the trust's principal place of administration to a jurisdiction outside of the United States, the trustee must provide written notice of the proposed transfer to the qualified beneficiaries of the trust, and the transfer cannot be made until the written consent of all the qualified beneficiaries is obtained.

(c) Anytime a trustee is required to provide a qualified beneficiary with written notice of a proposed transfer of a trust's principal place of administration, the notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) If the proposed transfer is to another state, the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(d) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under G.S. 36C-7-704.

"**§ 36C-1-109. Methods and waiver of notice.**

(a) Notice to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this Chapter, or a document otherwise required to be sent under this Chapter, need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) The person to be notified or to be sent a document may waive notice under this Chapter.

(d) Notice of a judicial proceeding must be given as provided in Article 2 of this Chapter.

"§ **36C-1-110. Others treated as qualified beneficiaries.**

(a) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this Chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal upon the termination of the interest of other distributees or permissible distributees then receiving or eligible to receive distributions, but the termination of those interests would not cause the trust to terminate; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(b) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in G.S. 36C-4-408 or G.S. 36C-4-409 has the rights of a qualified beneficiary under this Chapter.

"§ **36C-1-111. Nonjudicial settlement agreements.**

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Interested persons may enter into a binding nonjudicial settlement agreement with respect to any of the following matters involving a trust:

(1) The approval of a trustee's report or accounting;

(2) Direction to a trustee to perform or refrain from performing a particular administrative act or the grant to a trustee of any necessary or desirable administrative power, including a power granted under G.S. 36C-8-816;

(3) The resignation or appointment of a trustee and the determination of a trustee's compensation;

(4) Transfer of a trust's principal place of administration; and

(5) Liability of a trustee for any action taken under subdivisions (1) through (4) of this subsection.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this Chapter or other applicable law.

(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 of this Chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

"§ **36C-1-112. Rules of construction.**

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

"Article 2.

"Judicial Proceedings.

"§ **36C-2-201. Role of court in administration of trust.**

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by a party or as provided by law.

(b) A trust is not subject to continuing judicial supervision, except as provided in G.S. 36C-2-208 and G.S. 36C-2-209, unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

"§ **36C-2-202. Jurisdiction over trustee and beneficiary.**

(a) By accepting the trusteeship of a trust having its principal place of administration in this State, or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

"§ **36C-2-203. Subject matter jurisdiction.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(2) To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk of superior court, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee is required to initiate a proceeding to resign or renounce as trustee;

(3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final accounts;

(4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in G.S. 37A-1-104.3;

(5) To transfer a trust's principal place of administration;

(6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different sureties;

(7) To make orders with respect to a trust for the care of animals as provided in G.S. 36C-4-408;

(8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in G.S. 36C-4-409; and

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Upon motion of a party, the clerk of superior court may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court division of the General Court of Justice.

(b) Nothing in this section shall be construed (i) to confer upon the clerk of superior court any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the governing instrument or of State law; or (ii) to confer upon any party any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event either the petitioner or respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the superior court division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent consistent with this Article.

(d) The clerk of superior court shall not, over the objection of a party, entertain proceedings under this section involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk of superior court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk of superior court may grant a continuance or enter any other appropriate order.

(e) Any party to a proceeding before the clerk of superior court may appeal from the decision of the clerk to a superior court judge as provided for estate matters in G.S. 1-301.3.

(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of the following:

(1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416;

(2) Actions by or against creditors or debtors of a trust;

(3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence;

(4) Actions to enforce a charitable trust under G.S. 36C-4-405A; and

(5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1.

"§ **36C-2-204. Venue.**

In any trust proceeding or action, whether brought before the clerk of superior court or the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

(1) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.

(2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is:

a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary resides; or

b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.

(3) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

a. The usual place of business of the corporate trustee if there is but one corporate or cotrustee; or

b. The usual place of business or residence of any of the cotrustees.

(4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or if the trust is created by will, in the county in which the decedent's estate was or is being administered.

"**§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and joinder.**

(a) Contested Proceedings. – Trust proceedings before the clerk of superior court brought against adverse parties shall be commenced as is prescribed for civil actions. Upon the filing of the petition or complaint, the clerk of superior court shall docket the cause as an estate matter. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the summons for the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the summons for the additional persons. The summons shall notify the respondents to appear and answer the petition within 10 days after its service upon the respondents. The summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the clerk of superior court shall indicate on the summons by appropriate words that the summons is issued in an estate matter and not in a special proceeding or in a civil action and shall be served upon the respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time

for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Proceedings. – Trust proceedings before the clerk of superior court in which all the parties join in the proceeding shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – The petition or complaint filed in a trust proceeding before the clerk of superior court shall contain a short and plain statement of the claim which is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions, intended to be proved showing that the pleaders entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each averment of a pleading should be simple, concise, and direct. No technical forms of pleadings or motions are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All pleadings shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, nor more than once. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure**.** – Unless the clerk of superior court otherwise directs, Rules 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, and 45 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that the following Rules of Civil Procedure shall apply: Rules 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under G.S. 36C-3-305. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

(f) Consolidation. – When a trust proceeding pending before the clerk of superior court and a civil action pending before the superior court division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the trust proceeding or the civil action, a superior court judge may order a consolidation of the trust proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Upon the entry of an order consolidating a trust proceeding and civil action, the jurisdiction for all matters pending in both the trust proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before a superior court division of the General Court of Justice, a party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as that party has against an opposing party notwithstanding the fact that the claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(h) Orders Upon Consolidation/Joinder. – Upon the consolidation of a trust proceeding and civil action or joinder of claims under subsection (f) or (g) of this section, the clerk of superior court or the judge may make such orders as appropriate to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this section, the clerk of court's exclusive jurisdiction as set forth in G.S. 36C-2-203(a) shall not be stayed unless so ordered by the court.

"§ **36C-2-206. Representation of parties.**

In any trust proceeding or action, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

(1) Parties shall be represented as provided in Article 3 of this Chapter.

(2) In the case of any party represented by another as provided in subdivision (1) of this section, service of process shall be made by serving such representative**.**

"§ **36C-2-207. Waiver of notice.**

A party, or the representative of the party as provided in G.S. 36C-2-206, may waive notice by a writing signed by the party, the representative, or the attorney of the party or the representative, and filed in the proceeding.

"§ **36C-2-208. Accounting to clerk.**

(a) No trustee, including a trustee appointed by the clerk of superior court, is required to account to the clerk of superior court unless the trust instrument directs that the trustee is required to account to the clerk of superior court or unless the trustee is otherwise required by law to account to the clerk of superior court.

(b) If the trustee is required to account to the clerk of superior court, the trustee shall not be permitted to resign as trustee until a final account of the trust estate is filed with the clerk of superior court and until the court is satisfied that the account is true and correct, unless the terms of the trust instrument provide otherwise.

(c) Notwithstanding subsections (a) and (b) of this section, under a proceeding brought under G.S. 36C-4-405A, the clerk of superior court may require a trustee of a charitable trust to account to the clerk of superior court.

"§ **36C-2-209. Qualification and accounting of trustee of a testamentary trust.**

(a) For any testamentary trust created under a will of a decedent executed before January 1, 2004, the trustee shall first qualify under the laws applicable to executors, and shall file in the office of the clerk of superior court of the county where the will is probated inventories of the assets that come into the trustee's hands and annual and final accounts of the trust that are the same as required of executors and administrators. The power of the clerk of superior court to enforce the filing and the clerk's duties to audit and approve the trustee's inventories and accounts is the same as the clerk's powers and

duties with respect to the inventories and accounts of executors and administrators. This subsection shall not apply to the extent that the will makes a different provision.

(b) For any testamentary trust created under a will of a decedent executed on or after January 1, 2004, that directs the trustee to account to the clerk of superior court, the trustee shall first qualify under the laws applicable to executors and shall file in the office of the clerk of superior court of the county where the will is probated inventories of the assets that come into the trustee's hands and annual and final accounts of the trust that are the same as are required of executors and administrators. The power of the clerk of superior court to enforce the filing and the clerk's duties to audit and approve the trustee's inventories and accounts is the same as the clerk's powers and duties with respect to the inventories and accounts of executors and administrators. No trustee, including a trustee appointed by the clerk of superior court, is required to account to the clerk of superior court unless the will directs that the trustee is required to account to the clerk of superior court or unless otherwise required by law.

(c) The Administrative Office of the Courts may adopt rules regulating the registration or indexing of testamentary trusts.

"Article 3.

"Representation.

"**§ 36C-3-301. Representation: basic effect.**

(a) Notice to a person who may represent and bind another person under this Article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this Article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in G.S. 36C-4-411 and G.S. 36C-6-602, a person who under this Article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this Article with respect to the termination or modification of trust under G.S. 36C-4-411(a).

"**§ 36C-3-302. Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as permissible appointees, takers in default, or otherwise, are subject to the power. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

"**§ 36C-3-303. Representation by fiduciaries, parents, and other persons.**

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.

(2) A guardian of the person may represent and bind the ward if a general guardian or guardian of the estate of the ward's estate has not been appointed.

(3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.

(4) A trustee may represent and bind the beneficiaries of the trust.

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(6) A parent may represent and bind the parent's minor child if a general guardian, guardian of the estate, or guardian of the person for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.

(7) A person may represent and bind that person's unborn issue.

"**§ 36C-3-304. Representation by person having substantially identical interest.**

Unless otherwise represented under this Article, a minor, an incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person represented.

"**§ 36C-3-305. Appointment of representative; scope of representation.**

(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(b) Any representative under this Article may act on behalf of the individual represented with respect to any matter arising under this Chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative, including a guardian ad litem, may base a decision to consent to an action upon a finding that living members of the individual's family would generally benefit from that action.

"Article 4.

"Creation, Validity, Modification, and Termination of Trust.

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created by:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law; or

(3) Exercise of a power of appointment in favor of a trustee.

"§ **36C-4-401A. Interest of trustee as beneficiary of life insurance or other death benefit sufficient to support inter vivos or testamentary trust.**

(a) The interest of a trustee as the beneficiary of a life insurance policy is a sufficient property interest or res to support the creation of an inter vivos or testamentary trust notwithstanding the fact that the insured or any other person or persons reserves or has the right to exercise any one or more of the following rights or powers:

(1) To change the beneficiary;
(2) To surrender the policy and receive the cash surrender value;
(3) To borrow from the insurance company issuing the policy or elsewhere using the policy as collateral security;
(4) To assign the policy; or
(5) To exercise any other right in connection with the policy commonly known as an incident of ownership of that policy.

The term "life insurance policy" includes life, annuity, and endowment contracts, or any variation or combination of those contracts, and any agreement entered into by an insurance company in connection with life, annuity, or endowments contracts.

(b) The interest of a trustee as the beneficiary of a death benefit under an employee benefit plan or group life insurance policy is a sufficient property interest or res to support the creation of an inter vivos or testamentary trust notwithstanding the fact that the insured, employer, insurer or administrator of the plan reserves or has the right to revoke or otherwise defeat the designation or assignment or to exercise any one or more of the rights or powers incident to employee benefit plans or group life insurance policies.

The term "employee benefit plan" includes pension, retirement, death benefit, deferred compensation, employment, agency, retirement annuity, stock bonus, profit-sharing or employees' savings contracts, plans, systems or trusts; and trusts, securities or accounts established or held under the federal Self-Employed Individuals Tax Retirement Act of 1962, the federal Employee Retirement Income Security Act of 1974, or similar legislation. The term "group life insurance policy" includes group life, industrial life, accident, and health insurance policies having death benefits.

(c) A testator having the right to designate the beneficiary under a life insurance policy, employee benefit plan, or group life insurance policy described in subsection (a) or (b) of this section may designate as that beneficiary a trustee named or to be named in the testator's will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the testator. If no trustee makes claim to the proceeds within six months after the death of the testator, payments shall be made to the personal representative of the estate of the testator unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee is not subject to claims against the estate of the testator to estate or inheritance taxes to any greater extent than if the proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets that may properly become part of the trust, but the proceeds shall not become part of the testator's estate for purposes of trust administration unless the will expressly so provides.

"§ **36C-4-402. Requirements for creation.**

(a) A trust is created only if:

(1) The settlor has capacity to create a trust;

(2) The settlor indicates an intention to create the trust;
(3) The trust has a definite beneficiary or is:
a. A charitable trust;
b. A trust for the care of an animal, as provided in G.S. 36C-4-408; or
c. A trust for a noncharitable purpose, as provided in G.S. 36C-4-409;
(4) The trustee has duties to perform; and
(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

"**§ 36C-4-403. Trusts created in other jurisdictions.**

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The settlor was domiciled, had a place of abode, or was a national;
(2) A trustee was domiciled or had a place of business; or
(3) Any trust property was located.

"**§ 36C-4-404. Trust purposes.**

A trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

"**§ 36C-4-405. Charitable purposes.**

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, benevolent, literary, governmental, or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) It is the policy of the State that a gift for charitable purposes, whether in trust or otherwise, is valid, notwithstanding the fact that the gift is made in general terms, and this section shall be construed liberally to effect this policy.

(c) No gift for charitable purposes, whether in trust or otherwise, is void or invalid because:

(1) The gift is in general terms or is uncertain as to the specific charitable purposes;
(2) When the gift is made in trust, the trustee is granted discretionary powers in the selection and designation of the beneficiaries of that charitable trust or in carrying out the purpose of that trust;
(3) The trustee or other recipient of the gift is given no specific instructions, powers, or duties as to the manner or means of carrying out those charitable purposes; or
(4) The gift contravenes any statute or rule against perpetuities.

(d) When any gift is made in general terms, the trustee or other recipient of the gift may:

(1) Select from time to time one or more specific charitable beneficiaries or purposes for which any trust or property or income is held and administered; and

(2) Determine the means to accomplish those charitable purposes, unless otherwise provided, including the creation of corporations or other legal entities for those purposes.

(e) For purposes of this section, the reference to a "gift" includes both inter vivos and testamentary gifts, grants, and other transfers.

"**§ 36C-4-405A. Enforcement of charitable gift or trust.**

(a) The settlor of a charitable trust, the Attorney General, the district attorney, a beneficiary, or any other interested party may maintain a proceeding to enforce a charitable trust, including the following:

(1) A proceeding to require a trustee to make a selection as may be necessary to establish the charitable beneficiaries or purposes for which the trust was established, as provided in subdivisions (d)(1) and (d)(2) of G.S. 36C-4-405;

(2) A proceeding for breach of fiduciary duty if there is reason to believe that the trust property has been mismanaged through negligence or fraud; and

(3) A proceeding for an accounting of the trustee's administration of the trust.

(b) The donor of a charitable gift, the Attorney General, the district attorney, or any other interested party may maintain a proceeding to enforce the gift, including a proceeding to require the recipient of the gift to make a selection as may be necessary to establish the charitable beneficiaries or purposes for which the gift was intended, as provided in subdivisions (d)(1) and (d)(2) of G.S. 36C-4-405.

"**§ 36C-4-406. Creation of trust induced by fraud, duress, or undue influence.**

A trust is voidable to the extent that its creation was induced by fraud, duress, or undue influence.

"**§ 36C-4-407. Evidence of oral trust.**

Except as required by a State statute other than this Chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust, and its terms may be established only by clear and convincing evidence.

"**§ 36C-4-408. Trust for care of animal.**

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust instrument;

(2) If the trust was created in a preresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will;

(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the transferor or the transferor's heirs determined as

of the date of the transferor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the decedent's estate upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

"**§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

Except as otherwise provided in G.S. 36C-4-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent that the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.

(4) Notwithstanding subdivisions (1) through (3) of this section, a trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or

other applicable law. This section does not repeal or supersede G.S. 36C-4-413.

"**§ 36C-4-410. Modification or termination of trust; proceedings for approval or disapproval.**

(a) In addition to the methods of termination prescribed by G.S. 36C-4-411 through G.S. 36C-4-414, a trust terminates to the extent that the trust is revoked or expires under its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411 through G.S. 36C-4-416, or trust combination or division under G.S. 36C-4-417. A settlor may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a necessary party to any proceeding under this section.

(c) Jurisdiction of a proceeding brought under this section is as provided in G.S. 36C-2-203.

"**§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.**

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's general guardian or the guardian of the estate with the approval of the court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the court supervising the guardianship if an agent is not so authorized and a general guardian or guardian of the estate has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries, if the court concludes that modification is consistent with a material purpose of the trust.

(c) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c) of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"**§ 36C-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.**

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"**§ 36C-4-413. Cy pres.**

(a) Except as otherwise provided in subsection (d) of this section, if a charitable trust becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) The trust does not fail, in whole or in part;

(2) The trust property does not revert to the settlor or the settlor's successors in interest; and

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) The settlor or a trustee of a charitable trust, the Attorney General, a beneficiary, or any other interested party may maintain a cy pres proceeding under Article 2 of this Chapter.

(c) In every cy pres proceeding, the Attorney General shall be notified and given an opportunity to be heard.

(d) This section is not applicable if the settlor has provided, either directly or indirectly, for an alternative plan in the event that the charitable trust is or becomes unlawful, impracticable, impossible to achieve, or wasteful. However, if the alternative plan is also a charitable trust and that trust fails, the intention shown in the original plan shall prevail in the application of this section.

"**§ 36C-4-414. Modification or termination of uneconomic trust.**

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value of less than fifty thousand dollars ($50,000) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The trustee may enter into an agreement or make other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust. This subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125.6, provides that it shall not apply. The trustee shall not be liable for that termination and distribution notwithstanding the existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.

(c) This section does not apply to an easement for conservation or preservation.

(d) Jurisdiction of a proceeding brought under this section is as provided in G.S. 36C-2-203.

"**§ 36C-4-415. Reformation to correct mistakes.**

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"**§ 36C-4-416. Modification to achieve settlor's tax objectives.**

To achieve a settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect. Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"**§ 36C-4-417. Combination and division of trusts.**

(a) Unless otherwise provided in the trust instrument, after notice to the qualified beneficiaries, a trustee may:

(1) Consolidate the assets of more than one trust and administer the assets as one trust under the terms of one of the trusts if the terms of the trusts are substantially similar and the beneficiaries of the trusts are identical; or

(2) Divide one trust into two or more separate trusts if the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

(b) In dividing a trust into two or more separate trusts, a trustee shall accomplish the division by severing the trusts on a fractional basis and funding the separate trusts either (i) with a pro rata portion of each asset held by the undivided trust; or (ii) on a non-pro rata basis based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

(c) In any case where two separate identical trusts are created under this section, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the trustee may thereafter, to the extent possible consistent with the terms of the trust, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy those distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

"**§ 36C-4-418. Distribution upon termination of trust.**

Upon termination of a trust under G.S. 36C-4-411, the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under G.S. 36C-4-412 or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. If any trust property becomes distributable to a minor or incompetent under this Article, it may be distributed:

(1) To the guardian of the estate or general guardian of the beneficiary;

(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or

(3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.

"**§ 36C-4-419. Effect of inalienable interest on modification or termination.**

The court, in exercising its discretion to modify or terminate an irrevocable trust under G.S. 36C-4-411, 36C-4-412, or 36C-4-413 shall consider provisions making the interest of a beneficiary inalienable, including those described in Article 5, but the court is not precluded from the exercise of that discretion solely because of such provisions.

"Article 4A.

"Tax Status of Charitable Trusts.

"**§ 36C-4A-1. Prohibited transactions.**

(a) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (b) of this section, the trust instrument of each trust that is a private foundation described in section 509 of the Internal Revenue Code (including each nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code that is treated as a private foundation) and the trust instrument of each nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code (but only to the extent that section 508(e) of the Internal Revenue Code is applicable to the nonexempt split-interest trust under section 4947(a)(2) of the Internal Revenue Code) is considered to contain the following provisions: "The trust shall make distributions at any time and in any manner as not to subject it to tax under section 4942 of the Internal Revenue Code; the trust shall not engage in any act of self-dealing which would subject it to tax under section 4941 of the Internal Revenue Code; the trust shall not retain any excess business holdings that would subject it to tax under section 4943 of the Internal Revenue Code; the trust shall not make any investments that would subject it to tax under section 4944 of the Internal Revenue Code; and the trust shall not make any taxable expenditures that would subject it to tax under section 4945 of the Internal Revenue Code." With respect to any trust created before January 1, 1970, this section shall apply only for its taxable years beginning on or after January 1, 1972.

(b) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary, unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (a) of this section, the governing instrument of each trust that is a nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code is considered to contain the following provisions:

(1) The trust shall be operated exclusively for charitable, educational, religious, and scientific purposes within the meaning of section 501(c)(3) and section 170(c)(2) of the Internal Revenue Code.

(2) Upon any dissolution, winding up, or liquidation of the trust, its assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or a state or local government for a public purpose.

(c) The trustee of any trust described in this section may do one of the following:

(1) Without judicial proceedings, amend the trust to expressly exclude the application of this section by executing a written amendment to the trust instrument and filing a duplicate original of the amendment with the Attorney General. Upon filing of the amendment, this section shall not apply to that trust.

(2) Institute a proceeding under Article 2 of this Chapter seeking reformation of the trust instrument.

"**§ 36C-4A-2. Reformation of charitable remainder trust.**

If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property that passes from the decedent under a will or trust to a person, or for a use, described in section 2055(a) of the Internal Revenue Code, to meet the requirements of subsections 2055(e)(2)(A) or (B) of the Internal Revenue Code, then in order that the deduction shall nevertheless be allowable under section 2055(e)(3) of the Internal Revenue Code, the court may, on application of any trustee or interested party with either (i) the written consent of the qualified beneficiaries, or (ii) a finding that the interest of those beneficiaries is substantially preserved, order an amendment to the trust so that the remainder interest is in a trust that is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms are described in section 664 of the Internal Revenue Code), or a pooled income fund (as that term is described in section 642(c)(5) of the Internal Revenue Code), or so that any other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly), in accordance with section 2055(e)(2)(B) of the Internal Revenue Code. In every proceeding under this section, the Attorney General shall be notified, and given an opportunity to be heard.

"Article 4B.

"Charitable Remainder Trust Administration Act.

"**§ 36C-4B-1. Short title.**

This Article shall be known as the Charitable Remainder Administration Trust Act.

"**§ 36C-4B-2. General rule.**

Notwithstanding any provisions in the laws of this State or in the governing instruments to the contrary, any charitable remainder annuity trust and any charitable remainder unitrust that cannot qualify for a deduction for federal tax purposes under section 2055 or section 2522 of the Internal Revenue Code in the absence of this Article shall be administered in accordance with this Article.

"**§ 36C-4B-3. Definitions.**

The following definitions apply to this Article unless the context clearly requires otherwise:

(1) "Charitable remainder trust" means a trust that provides for a specified distribution at least annually for either life or a term of years to one or more beneficiaries, at least one of which is not a charity (hereinafter referred to as "beneficiaries"), with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity. For purposes of this Article, only a charitable remainder annuity trust or a charitable remainder unitrust is considered a charitable remainder trust.

(2) "Charitable remainder annuity trust" means a charitable remainder trust:

a. From which a sum certain (that is not less than five percent (5%) of the initial net fair market value of all property placed in trust) is to be paid at least annually to one or more persons (at least one of which is not an organization described in section 170(c) of the Internal Revenue Code and, in the case of individuals, only to an individual who was living at the time of the creation of the trust) for a term of years (not in excess of 20

years) or for the life or lives of that individual or those individuals; however, in the case of an individual, the amount to be paid to that individual may be subject to a qualified contingency according to the terms of the governing instrument;

b. From which no amount other than the payments described in sub-subdivision a. of this subdivision may be paid to or for or both to and for the use of anyone other than an organization that is or was described in section 170(c) of the Internal Revenue Code; and

c. Following the termination of the payments described in sub-subdivision a. of this subdivision, the remainder interest in the trust is to be transferred to, or for the use of, an organization that is or was described in section 170(c) of the Internal Revenue Code or is to be retained by the trust for that use.

(3) "Charitable remainder unitrust" means a charitable remainder trust:

a. From which a fixed percentage (that is not less than five percent (5%)) of the net fair market value of its assets, valued annually, is to be paid at least annually to one or more persons (at least one of which is not an organization described in section 170(c) of the Internal Revenue Code and, in the case of individuals, only to an individual who was living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of that individual or those individuals; however, in the case of an individual, the amount to be paid to that individual may be made subject to a qualified contingency according to the terms of the governing instrument;

b. From which no amount other than the payments described in sub-subdivision a. of this subdivision may be paid to or for the use of anyone other than an organization that is or was an organization described in section 170(c) of the Internal Revenue Code; and

c. Following the termination of the payments described in sub-subdivision a. of this subdivision, the remainder interest in the trust is to be transferred to, or for the use of, an organization that is or was described in section 170(c) of the Internal Revenue Code, or is to be retained by the trust for such a use.

Notwithstanding sub-subdivisions a. and b. of this subdivision, the trust instrument may provide that the trustee shall pay to the income beneficiary for any year (i) the amount of the trust income if that amount is less than the amount required to be distributed under sub-subdivision a. of this subdivision, and (ii) any amount of the trust income that exceeds the amount required to be distributed under sub-subdivision a. of this subdivision to the extent that (by reason of sub-subdivision a.) the aggregate of the amounts paid in prior years is less than the aggregate of the required amounts.

(4) "Qualified contingency" means any provision of the governing instrument that provides that, upon the happening of a contingency, the payments made to an individual noncharitable beneficiary of a

charitable remainder trust will terminate not later than those payments would otherwise terminate under the governing instrument.

"**§ 36C-4B-4. Administrative provisions applicable to both charitable remainder annuity trusts and charitable remainder unitrusts.**

(a) Creation of Remainder Interests in Charity. – Upon the termination of the noncharitable interests, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiary or beneficiaries, to the designated charity or charities, or shall hold the property in trust for the designated charity or charities in accordance with the terms of the trust document.

(b) Selection of Alternate Charitable Beneficiary if Remaindermen Do Not Qualify Under Section 170(c) of the Internal Revenue Code at Time of Distribution. – If the designated charity is not an organization described in section 170(c) of the Internal Revenue Code at the time when any principal or income of the trust is to be distributed to it, the trustee must distribute the principal or income to one or more organizations then described in section 170(c) of the Internal Revenue Code selected in accordance with the terms of the trust instrument. If the trust instrument does not provide for a method of selecting alternate charitable beneficiaries that are then qualified under section 170(c) of the Internal Revenue Code, the trustee must, in the trustee's sole discretion, select alternate trust beneficiaries that are qualified under section 170(c) of the Internal Revenue Code.

(bl) Selection of Alternative Charitable Beneficiary if Remaindermen Do Not Qualify Under Section 170(b)(1)(A) of the Internal Revenue Code at Time of Distribution. – Notwithstanding subsection (b) of this section, if the designated charity is, at the time of the creation of the trust, an organization described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, and if the designated charity is not an organization described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code when any principal or income of the trust is to be distributed to it, the trustee must distribute the principal or income to one or more organizations then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code selected in accordance with the terms of the governing instrument; however, in the event that the governing instrument does not provide a method of selecting alternative charitable beneficiaries that are then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, the trustee shall, in his sole discretion, select one or more alternative charitable beneficiaries that are described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code and must distribute the principal or income to the organization or organizations so selected in shares as the trustee, in the trustee's sole discretion, shall determine.

(c) Prohibitions Governing Trustees. – Except for payment of the annuity amount or the unitrust amount to the beneficiaries, whichever is applicable, the trustee is prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, retaining any excess business holdings as defined in section 4943(c) of the Internal Revenue Code that would subject the trust to tax under section 4943 of the Code, making any investments that would subject the trust to tax under section 4944 of the Internal Revenue Code, and making any taxable expenditures as defined in section 4945(d) of the Code. The trustee shall make distributions at a time and in a manner as not to subject the trust to tax under section 4942 of the Internal Revenue Code.

(d) Distribution to Charity During Term of Noncharitable Interests and Distributions in Kind. – If the governing instrument of the trust provides for distribution

to charity during the term of the noncharitable interests, the trustee may pay to the designated charity the amounts specified in the governing instrument that exceed the annuity amount or the unitrust amount payable to any of the beneficiaries for the taxable year of the trust in which the income is earned. If the governing instrument of the trust provides for distribution to charity in kind, the adjusted basis for federal income tax purposes of any trust property the trustee distributes in kind to charity during the term of the noncharitable interests must be fairly representative of the adjusted basis for those purposes of all trust property available for distribution on the date of distribution.

(e) Investment Restrictions on Trustee. – Nothing in the trust instrument shall be construed to restrict the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

(f) Distribution From Trust Used to Administer an Estate to Charitable Remainder Trust. – If the governing instrument of a revocable inter vivos trust provides that the revocable inter vivos trust will be used partially to administer the estate of the settlor or for some other purpose, and further provides the assets will then be distributed to another trust that is a charitable remainder trust, upon the death of the settlor, or upon the occurrence of any event that causes the trust to become irrevocable, then the trust shall become irrevocable, and the trustee of this trust shall perform any remaining duties or obligations provided for in the trust instrument and then transfer the property specified in the governing instrument to the trustee of the charitable remainder trust to be held, administered, and distributed in the manner and according to the terms and conditions provided by the charitable remainder trust.

(g) Payment of Taxes by Noncharitable Beneficiary. – In the case of any inter vivos charitable remainder trust that is liable to pay, from trust property, any federal estate, state inheritance, or other similar death taxes by reason of the death of the settlor of the trust, the interest of any noncharitable beneficiary of the trust shall terminate upon the death of the settlor unless the noncharitable beneficiary furnishes to the trust sufficient funds for payment of all those taxes attributable to the interest of the noncharitable beneficiary in the trust property, and the termination shall be deemed as the occurrence of a qualified contingency.

"**§ 36C-4B-5. Administrative provisions applicable to charitable remainder trusts only.**

(a) Creation of Annuity Amount for Period of Years or Life. – In each taxable year of the trust, the trustee shall pay the annuity amount designated in the trust instrument to the beneficiaries named in the trust instrument during their lives or, if the governing instrument so provides, for a period of 20 years or less. The annuity amount shall be paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The annuity amount shall be paid from income and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal.

The total amount payable at least annually to a person or persons named in the trust document, at least one of which is not an organization described in section 170(c) of the Internal Revenue Code, may not be less than five percent (5%) of the initial net fair market value of the property placed in trust as finally determined for federal tax purposes, except as provided in subsection (g) of this section.

(b) Computation of Annuity Amount in Short and Final Taxable Years. – For a short taxable year and for the taxable year in which the noncharitable beneficiary's

interest terminates by death or otherwise, the trustee shall prorate the annuity amount on a daily basis.

(c) Prohibition of Additional Contributions. – No additional contributions shall be made to the trust after the initial contribution.

(d) Deferral of Annuity Amount During Period of Administration or Settlement. – When property passes to the trust at the death of the settlor, the obligation to pay the annuity amount commences with the date of death of the settlor, but payment of the annuity amount may be deferred from the date of the settlor's death to the end of the taxable year in which complete funding of the trust occurs. Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

(1) Any annuity amounts actually paid, plus interest on those amounts computed at ten percent (10%) a year, compounded annually; and

(2) The annuity amounts payable, determined under the method described in Section 1.664-1(a)(5) of the federal income tax regulations, plus interest on those amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the annuity amounts, if the governing instrument was executed or last amended before August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the annuity amounts must be computed using an interest rate at six percent (6%) a year, compounded annually.

(e) Dollar Amount Annuity May Be Stated as Fraction or Percentage. – If the governing instrument of the trust states the amount of the annuity as a fraction or a percentage, the trustee must pay to the beneficiaries in each taxable year of the trust during their lives an annuity amount equal to a percentage (that percentage being stipulated in the governing instrument of the trust and, in any event, being five percent (5%) or greater) of the initial net fair market value of the assets constituting the trust. In determining this amount, assets shall be valued at their values as finally determined for federal tax purposes. If the fiduciary incorrectly determines the initial net fair market value of the assets constituting the trust, then, within a reasonable period after a final determination, the trustee shall pay to the beneficiaries, in the case of an undervaluation or shall receive from the beneficiaries, in the case of an overvaluation, an amount equal to the difference between the annuity amount properly payable and the annuity amount actually paid.

(f) Annuity Amount May Be Allocated Among Class of Noncharitable Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust provides that the annuity trust amount may be allocated among a class of noncharitable beneficiaries in the discretion of the trustee, then the trustee must pay the annuity amount, which is defined in the governing instrument of the trust, in each taxable year of the trust, to the member or members of the class of noncharitable beneficiaries in an amount and proportions as the trustee in the trustee's absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the entire annuity amount to one member of this class or may apportion it among the various members in a manner as the trustee from time to time considers advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the trust under the rules of section 671

through section 678 of the Internal Revenue Code. If the class provided for in the governing instrument is open, then the distribution must be for a period of years not to exceed 20 years, notwithstanding a provision to the contrary in the trust instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period not exceeding 20 years. The trustee shall pay the entire annuity amount for each taxable year annually and may not delay payment of the annuity amount.

(g) Reduction of Annuity Amount If Part of Corpus Is Paid to Charity at Expiration of Term of Years or on Death of Recipient. – If the governing instrument of the trust provides for the reduction of the annuity amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries, the trustee shall, in each taxable year of the trust, pay a total annuity amount of at least five percent (5%) of the initial net fair market value of the assets placed in trust. Upon the expiration of the term of years or the death of a beneficiary, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter the trustee shall pay, annually or in more frequent installments, to the survivors for their lives, an annuity amount that in each taxable year of the trust, bears the same ratio to five percent (5%) of the initial net fair market value of the trust assets as the net fair market value of the trust assets valued as of the date of distribution, less the amount or percentage of trust assets distributed to the charity, bears to the net fair market value of the trust assets as of the date of distribution.

(h) Termination of Annuity Amount on Payment Date Preceding Termination of Noncharitable Interest. – If the governing instrument of the trust provides that payment of the annuity amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee must pay to the noncharitable beneficiary during the term of the noncharitable interest the annuity amount, defined in the trust document, in each taxable year of the trust. The obligation of the trustee to pay the annuity amount shall terminate with the payment preceding the death of the noncharitable beneficiary or other event that terminates the noncharitable interest.

(i) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the governing instrument of the trust provides that the settlor of the trust retains the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in section 170(c) of the Internal Revenue Code, then the trustee shall pay to the settlor during the settlor's life the annuity amount, as defined in the governing instrument of the trust and, upon the death of the settlor, if the noncharitable beneficiary survives the settlor, the trustee must pay to the noncharitable beneficiary during that beneficiary's life the annuity amount equal to the amount paid to the settlor. The settlor shall have the power, exercisable only by will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the survivor of the settlor and noncharitable beneficiary; or (ii) the death of the settlor if the settlor effectively exercised the settlor's testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee must distribute all of the then principal and income of the trust, other than any amount due the settlor or noncharitable beneficiary, to the charity named in the trust document or, if the governing instrument so provides, the trustee must continue to hold the principal and income in trust for the charity or for

the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust is effective.

"§ **36C-4B-6. Administrative provisions applicable to charitable remainder unitrusts only.**

(a) Creation of Unitrust Amount for a Period of Years or Life. – The trustee shall pay to the beneficiaries named in the trust investment in each taxable year of the trust during their lives or, if the governing instrument so provides, for a period not exceeding 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing instrument of the trust, of the net fair market value of the trust assets valued annually on the date or by the method designated in the governing instrument of the trust or, if no date or method is specified, on the date or by the method selected by the trustee in the trustee's discretion, so long as the same valuation date or dates or valuation methods are used each year. The unitrust amount is paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The unitrust amount is paid from income and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the unitrust amount is added to principal. The fixed percentage to be paid at least annually to all beneficiaries cannot be less than five percent (5%).

(b) Unitrust Amount Expressed as the Lesser of Income or a Fixed Percentage. – If the governing instrument of the trust provides that the trustee shall pay, instead of a regular unitrust amount (the fixed percentage of the net fair market value of the trust assets, determined annually), the amount of trust income for the taxable year to the extent that this amount is not greater than the amount required to be distributed as a regular unitrust amount for that taxable year or the amount of the trust income for the taxable year that exceeds the regular unitrust amount for that taxable year to the extent that the aggregate of the amounts paid in prior years is less than the aggregate of the regular unitrust amount for those prior years, then the trustee must pay to the beneficiaries in each taxable year of the trust during their lives, or for a period not exceeding 20 years if the trust agreement so provides, an amount equal to the lesser of (i) the trust income for the taxable year, as defined in section 643(b) of the Internal Revenue Code and the regulations under that section, and (ii) the percentage, as stated in the governing instrument, of the net fair market value of the trust assets valued as of the taxable year decreased as elsewhere provided if the taxable year is a short taxable year or is the taxable year in which the noncharitable interest terminates by death or otherwise, and increased as elsewhere provided if additional contributions are made in the taxable year.

If the governing instrument of the trust so provides and if the trust income for any taxable year exceeds the amount determined under (ii) above, the payment to beneficiaries also must include the excess income to the extent that the aggregate of the amounts paid to beneficiaries in prior years is less than the percentage of the aggregate net fair market value of the trust assets, which percentage is defined in the governing instrument of the trust, for these years. Payments to beneficiaries must be made annually or in more frequent equal or unequal installments if the governing instrument so provides. Any income of the trust in excess of these payments must be added to principal.

(c) Adjustment for Incorrect Valuation. – If the fiduciary incorrectly determines the net fair market value of the trust assets for any taxable year, the trustee must, within a reasonable period after the final determination of the correct value, pay to the beneficiaries, in the case of an undervaluation, or receive from the beneficiaries, in the

case of an overvaluation, an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

(d) Computation of Unitrust Amount in Short and Final Taxable Years. – For a short taxable year and for the taxable year in which the noncharitable beneficiary's interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on a daily basis. If a trust provides for a valuation date other than the first day of the taxable year, and the valuation date does not occur in a taxable year of the trust because the taxable year is either a short taxable year or is the taxable year in which the noncharitable interests terminate, the trust assets must be valued as of the last day of the short taxable year or the day on which the noncharitable interests terminate, as appropriate.

(e) Additional Contributions. – If the governing instrument does not prohibit additional contributions and additional contributions are made to the trust after the initial contribution in the trust, the unitrust amount for the taxable year in which the additional contributions are made must be a fixed percentage, as stated in the governing instrument of the trust, of the sum of (i) the net fair market value of trust assets, excluding the additional contributions and any income from or appreciation of these contributions and (ii) that proportion of the value of the additional contributions excluded under (i) which the number of days in the period beginning with the date of contribution and ending with the earlier of the last day of the taxable year or the day the noncharitable beneficiary's interest terminated bears to the number of days in the period beginning on the first day of the taxable year and ending with the earlier of the last day in the taxable year or the day the noncharitable beneficiary's interest terminated. If no valuation date occurs after the contributions are made, the assets so added are valued as of the time of contribution.

(f) Deferral of Unitrust Amount During Period of Administration or Settlement. – When property passes to the trust at the death of the settlor, the obligation to pay the unitrust amount commences with the date of the settlor's death, but payment of the unitrust amount may be deferred from the date of the settlor's death to the end of the taxable year of the trust in which complete funding of the trust occurs. Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

(1) Any unitrust amounts actually paid, plus interest on those amounts computed at ten percent (10%) a year, compounded annually; and

(2) The unitrust amounts payable, determined under the method described in section 1.664-1(a)(5) of the federal income tax regulations, plus interest on those amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the unitrust amounts, if the governing instrument was executed or last amended before August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the unitrust amounts shall be computed using an interest rate of six percent (6%) a year, compounded annually.

(g) Unitrust Amount May Be Allocated Among Class of Noncharitable Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust provides that the unitrust amount may be allocated to a class of noncharitable

beneficiaries in the discretion of the trustee, then the trustee must pay, in each taxable year of the trust, the unitrust amount to the member or members of the class of noncharitable beneficiaries in amounts and proportions as the trustee in the trustee's absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the unitrust amount to any one member of the class or may apportion it among the various members in a manner that the trustee shall from time to time consider advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the trust under the rules of section 671 through section 678 of the Internal Revenue Code. If the class provided for in the governing instrument is open, the distribution must be for a period not exceeding 20 years, notwithstanding a provision to the contrary in the trust instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period not exceeding 20 years. The trustee shall pay the entire unitrust amount for each taxable year annually and may not delay payment of the unitrust amount.

(h) Reduction of Unitrust Amount if Part of Corpus Is Paid to Charity at Expiration of Term of Years or on Death of a Recipient. – If the governing instrument of the trust provides for the reduction of the unitrust amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries the trustee shall, in each taxable year of the trust, pay the total unitrust amount equal to a percentage of the net fair market value of the trust assets valued annually, which shall not be less than five percent (5%). Upon expiration of the term of years or the death of a recipient, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter the trustee shall pay to the survivors for their lives a unitrust amount in each taxable year of the trust equal to at least five percent (5%) (the actual percentage being defined in the trust instrument) of the net fair market value of the remaining trust assets valued annually.

(i) Termination of Unitrust Amount on Payment Date Preceding Termination of Noncharitable Interests. – If the governing instrument of the trust provides that payment of the unitrust amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee must pay the unitrust amount to the noncharitable beneficiary in each taxable year of the trust during the term of the noncharitable interest. The obligation of the trustee to pay the unitrust amount terminates with the payment preceding the termination of the noncharitable interest by death or otherwise. The five percent (5%) requirement provided in subsection (a) of this section shall be met until the termination of all payments of the unitrust amount.

(j) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the governing instrument of the trust provides that the settlor of the trust shall retain the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in section 170(c) of the Internal Revenue Code, then the trustee must pay the unitrust amount to the settlor during the settlor's life and, upon the death of the settlor, shall pay the unitrust amount to the noncharitable beneficiary during the charitable beneficiary's life, provided the noncharitable beneficiary survives the settlor. The settlor shall have the power, exercisable only by will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the survivor of the settlor and the noncharitable

beneficiary; or (ii) the death of the settlor if the settlor effectively exercised the testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiaries, to the charity named in the trust document or, if the governing instrument so provides, the trustee shall continue to hold the principal and income in trust for the charity or for the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust is effective.

"**§ 36C-4B-7. Interpretation.**

This Article shall be interpreted and construed to effectuate its general purpose to cause all charitable remainder annuity trusts and all charitable remainder unitrusts to be administered in accordance with section 2055 and section 2522 of the Internal Revenue Code and the regulations under those sections.

"Article 5.

"Creditors' Claims; Spendthrift and Discretionary Trusts.

"**§ 36C-5-501. Rights of beneficiary's creditor or assignee.**

(a) Except as provided in subsection (b) of this section, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to that relief as is appropriate under the circumstances.

(b) This section shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the extent that a beneficiary's interest:

(1) Is subject to a spendthrift provision;

(2) Is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2); or

(3) Is a protective trust interest as described in G.S. 36C-5-508.

"**§ 36C-5-502. Spendthrift provision.**

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this Article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

"**§ 36C-5-503. Exceptions to spendthrift provision.**

(a) As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Even if a trust contains a spendthrift provision, or if the beneficiary's interest is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to relief that is appropriate under the circumstances.

"**§ 36C-5-504. Discretionary trusts; effect of standard.**

(a) In this section:

(1) "Child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(2) "Discretionary trust interest" means an interest in a trust that is subject to the trustee's discretion, whether or not the discretion is expressed in the form of a standard of distribution. A discretionary trust interest shall include an interest in any one or any combination of the following:

a. A trust in which the amount to be received by the beneficiary, including whether or not the beneficiary, or a class of beneficiaries, is to receive anything at all, is within the discretion of the trustee.

b. A trust in which the trustee has no duty to pay or distribute any particular amount to the beneficiary, but has only a duty to pay or distribute to the beneficiary, or apply on behalf of the beneficiary, those sums that the trustee, in the trustee's discretion, determines are appropriate for the support, education, or maintenance of the beneficiary.

(b) The beneficiary may not transfer a discretionary trust interest. Except as otherwise provided in this Article, a creditor or assignee of a beneficiary may not reach a discretionary trust interest or a distribution by the trustee before its receipt by the beneficiary.

(c) Except as provided in subsection (d) of this section, a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest even if the trustee has abused the trustee's discretion.

(d) To the extent that a trustee has not complied with a standard of distribution or has abused a discretion:

(1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and

(2) The court shall direct the trustee to pay to the child an amount that is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(e) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(f) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

"§ **36C-5-505. Creditor's claim against settlor.**

(a) Whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed

the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by G.S. 28A-19-3.

(b) The lapse, release, or waiver of a power of withdrawal shall not cause the holder to be treated as a settlor of the trust.

"**§ 36C-5-506. Overdue distribution.**

(a) In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term excludes a distribution subject to the exercise of the trustee's discretion, regardless of whether the terms of the trust (i) include a support or other standard to guide the trustee in making distribution decisions; or (ii) provide that the trustee "may" or "shall" make discretionary distributions, including distributions under a support or other standard.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

"**§ 36C-5-507. Personal obligations of trustee.**

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

"**§ 36C-5-508. Protective trusts.**

Except with respect to an interest retained by the settlor, a "protective trust interest" means an interest in a trust in which the terms of the trust provide that the interest terminates or becomes discretionary if:

(1) The beneficiary alienates or attempts to alienate that interest; or

(2) Any creditor attempts to reach the beneficiary's interest by attachment, levy, or otherwise; or

(3) The beneficiary becomes insolvent or bankrupt.

"Article 6.

"Revocable Trusts.

"**§ 36C-6-601. Capacity of settlor of revocable trust.**

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

"**§ 36C-6-602. Revocation or amendment of revocable trust.**

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust without regard to the actual capacity of the settlor. This subsection does not apply to a trust created under an instrument executed before the effective date of this Chapter.

(b) If a revocable trust is created or funded by more than one settlor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

a. A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

b. By oral statement to the trustee if the trust was created orally; or

c. Any other written method delivered to the trustee manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney provided the exercise of the power of revocation or amendment does not alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan.

(f) A general guardian or a guardian of the estate of the settlor or, if no general guardian or guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

"**§ 36C-6-603. Settlor's powers; powers of withdrawal.**

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors.

"**§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.**

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) Three years after the settlor's death; or

(2) 120 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

"Article 7.

"Office of Trustee.

"**§ 36C-7-701. Accepting or declining trusteeship.**

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time, not to exceed 120 days, after receiving written notice of the trusteeship is considered to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

"**§ 36C-7-702. Trustee's bond.**

(a) A trustee shall provide bond to secure the performance of the trustee's duties if:

(1) The trust instrument was executed before January 1, 2006, unless the terms of the trust instrument provide otherwise;

(2) The trust instrument was executed on or after January 1, 2006, but only if the terms of the trust instrument require the trustee to provide bond;

(3) A beneficiary requests the trustee to provide bond, and the court finds the request to be reasonable; or

(4) The court finds that it is necessary for the trustee to provide bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

However, in no event shall bond be required of a trustee if the governing instrument directs otherwise.

(b) If bond is required, it shall be in a sum of double the value of the personal property to come into the trustee's hands if bond is executed by a personal surety, and in

an amount not less than one and one-fourth times the value of all personal property of the trust estate if the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) of that value, conditioned upon the faithful performance of the trustee's duties and for the payment to the persons entitled to receive property that may come into the trustee's hands. All bonds executed under this Article shall be filed with the clerk of superior court.

(c) On petition of the trustee or a qualified beneficiary, the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties.

(d) As provided in G.S. 53-159 and G.S. 53-366(a)(10), banks and trust companies licensed to do trust business in this State need not give bond, even if required by the terms of the trust.

"§ **36C-7-703. Cotrustees.**

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision if more than two are serving. Unanimity is required when only two cotrustees are serving.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust and exercise all trustee powers, except those powers that the remaining trustees are prohibited from exercising under the trust instrument or by law.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee with the consent of the cotrustee the performance of any function other than those the settlor reasonably expected the trustees to perform jointly. The following functions are not considered to be those that the settlor reasonably expected the trustees to perform jointly:

(1) Establish and maintain bank accounts for the trust and issue checks for the trust.

(2) Maintain inventories, accountings, and income and expense records of the trust.

(3) Enter any safety deposit box rented by the trust.

(4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.

(5) List trust property for taxes and prepare and file tax returns for the trust.

(6) Collect and give receipts for claims and debts of the trust.

(7) Pay debts, claims, costs of administration, and taxes of the trust.

(8) Compromise, adjust, or otherwise settle any claim by or against the trust and release, in whole or in part, a claim belonging to the trust.

(9) Have custody of the trust property.

(10) Perform any function relating to investment of trust assets.

The list of functions contained in this subsection is not intended to be exclusive of others that may be delegated to a cotrustee in accordance with this subsection.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) Notwithstanding subsection (f) or (g) of this section, a trustee who has not joined in an action approved by a majority of the other trustees is not liable for the action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who joins in an action at the direction of the majority of the trustees but who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action, unless that trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action.

(i) Notwithstanding any other provision of this section to the contrary, if two or more trustees own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, the act binds all;

(2) If more than one vote, in person or by proxy, the act binds all; and

(3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

"§ **36C-7-704. Vacancy in trusteeship; appointment of successor.**

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or

(3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

(f) A successor trustee shall succeed to all the rights, powers, and privileges, and is subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee, unless a contrary intent appears from the governing instrument or unless the order appointing the successor trustee provides otherwise.

"§ **36C-7-705. Resignation of trustee.**

(a) A trustee may resign:

(1) Upon at least 30 days' notice in writing to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

"§ **36C-7-706. Removal of trustee.**

(a) For the reasons set forth in subsection (b) of this section, the settlor of an irrevocable trust, a cotrustee of an irrevocable trust, or a beneficiary of an irrevocable trust may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is consistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under G.S. 36C-10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

"§ **36C-7-707. Delivery of property by former trustee.**

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. A former trustee shall execute those documents transferring title to trust property as may be appropriate to facilitate administration of the trust, and in the event that the former trustee fails to do so, the clerk of superior court may order the former trustee to execute those documents, or the clerk of superior court may transfer title.

"§ **36C-7-708. Compensation of trustee.**

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation determined in accordance with Article 6 of Chapter 32 of the General Statutes.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified.

"§ **36C-7-709. Reimbursement of expenses.**

A trustee is entitled to be reimbursed out of the trust property for expenses properly incurred in the administration of the trust as provided in G.S. 32-58.

"Article 8.

"Duties and Powers of Trustee.

"§ **36C-8-801. Duty to administer trust.**

Upon acceptance of a trusteeship, a trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this Chapter.

"§ **36C-8-802. Duty of loyalty.**

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in G.S. 36C-10-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account, or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests, is voidable by a beneficiary affected by the transaction, without regard to whether the transaction is fair to the beneficiary, unless:

(1) The terms of the trust authorized the transaction;

(2) The court approved the transaction;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by G.S. 36C-10-1005;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with G.S. 36C-10-1009; or

(5) The transaction involves a contract entered into, or claim acquired by, the trustee before the person became or contemplated becoming trustee.

(c) In determining whether a sale, encumbrance, or other transaction involving the investment or management of trust property is affected by a conflict of interest between the trustee's fiduciary and personal interests, the transaction is rebuttably presumed to be affected by a conflict of interest if the trustee enters into the transaction with:

(1) The trustee's spouse or a parent of the trustee's spouse;

(2) The trustee's descendants, siblings, ancestors, or their spouses;

(3) An agent, attorney, employee, officer, director, member, manager, or partner of the trustee, or an entity that controls, is controlled by, or is under common control with the trustee; or

(4) Any other person or entity in which the trustee, or a person that owns a significant interest in the trust, has an interest or relationship that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property, but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary, and from which the trustee obtains an

advantage, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) Notwithstanding subsection (c) of this section:

(1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee has an investment, or to which the trustee, or its affiliate, provides services is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under G.S. 36C-8-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined; and

(2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent with payments generally made in the community for the same or similar services.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect to appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) Payment of reasonable compensation to the trustee;

(3) A transaction between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the trustee; or

(5) An advance by the trustee of money for the protection of the trust.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

"§ **36C-8-803. Impartiality.**

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

"§ **36C-8-804. Prudent administration.**

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

"**§ 36C-8-805. Cost of administration.**

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

"**§ 36C-8-806. Trustee's skills.**

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

"**§ 36C-8-807. Delegation by trustee.**

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

"**§ 36C-8-808. Powers to direct.**

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust, even if doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee must act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust, or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

"**§ 36C-8-809. Control and protection of trust property.**

A trustee shall take reasonable steps to take control of and protect the trust property.

"**§ 36C-8-810. Record keeping and identification of trust property.**

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

"**§ 36C-8-811. Enforcement and defense of claims.**

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

"**§ 36C-8-812. Collecting trust property.**

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee.

"**§ 36C-8-813. Duty to inform and report.**

(a) The trustee is under a duty to a qualified beneficiary to give that beneficiary upon request and at reasonable times complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary, or the beneficiary's representative, to inspect the subject matter of the trust and the accounts and other documents relating to the trust.

(b) Notwithstanding subsection (a) of this section:

(1) The duty of the trustee under subsection (a) of this section shall not include informing any beneficiary in advance of transactions relating to the trust property.

(2) A trustee is considered to have discharged the trustee's duty under subsection (a) of this section as to a qualified beneficiary for matters disclosed by a report sent at least annually and at termination of the trust to the beneficiary that describes the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, and lists the trust assets and their respective market values, including estimated values of assets with uncertain values. No presumption shall arise that a trustee who does not comply with this subdivision failed to discharge the trustee's duty under subsection (a) of this section.

(c) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. With respect to future reports and other information, a beneficiary may withdraw a waiver previously given.

(d) Subsection (b) of this section applies only to a trust created under a trust instrument executed on or after the effective date of this Chapter.

"**§ 36C-8-814. Discretionary powers; tax savings.**

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive, even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power that would, except for this

subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.

(2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal benefit, the trustee may exercise the power in accordance with an ascertainable standard.

(3) The trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

For purposes of this subsection, a "general power of appointment" means any power that would cause the income to be taxed to the trustee in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or section 2514(c) of the Internal Revenue Code.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or section 2523(e) of the Internal Revenue Code, was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust, if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

(e) If a trust created under a will or trust instrument for the benefit of the spouse of the settlor of the trust, other than a trust that provides that upon the termination of the income interest that the entire remaining trust estate be paid to the estate of the spouse, requires that all the income of the trust be paid not less frequently than annually to the spouse and a federal estate or gift tax marital deduction is claimed with respect to the trust, then, unless the trust instrument specifically provides otherwise by reference to this section, any investment in or retention of unproductive property as an asset of the trust is subject to the power of the spouse to require either that the asset be made productive of income, or that it be converted to assets productive of income, within a reasonable period of time.

"§ **36C-8-815. General powers of trustee.**

(a) A trustee, without authorization by the court, may exercise:

(1) Powers conferred by the terms of the trust; or

(2) Except as limited by the terms of the trust:

a. All powers over the trust property that an unmarried competent owner has over individually owned property;

b. Any other powers appropriate to achieve the proper investment, management, administration, or distribution of the trust property; and

c. Any other powers conferred by this Chapter.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this Article.

"§ **36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

(1) Collect and control trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) Invest and reinvest trust property as the trustee considers advisable in accordance with the trust, and to acquire or sell property, for cash or on credit, at public or private sale;

(3) Exchange, partition, or otherwise change the character of trust property;

(4) Deposit trust money in an account in a regulated financial services institution, including an institution operated by the trustee or an affiliate of the trustee upon compliance with any applicable requirements for the deposit;

(5) Borrow money, with or without security, including from a corporate trustee's lending department, renew or modify loans, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise, form and transfer, assign, and convey to that form of business or enterprise all or any part of the trust property in exchange for the stock, securities, or obligations of that form of business or enterprise, continue any business or other enterprise, and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization, or contributing additional capital;

(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

a. Vote, or give general or limited proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement, or execute waivers, consents, or objections with respect to those securities;

b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights;

d. Deposit the securities with a depositary or other regulated financial service institution; and

e. Consent, directly or through a committee or other agent, to the merger, consolidation, reorganization, readjustment of capital or financial structure, lease, sale, dissolution, or liquidation of a business enterprise, and elect whether to participate as a member of a class in any litigation involving the securities;

(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing party walls or buildings or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries, make contracts, licenses, leases, conveyances, or grants of every nature and kind with respect to crops, gravel, sand, oil, gas, timber and forest products, other usufructs or natural resources, and other benefits or incidents of the real property;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust at the expense of the trust;

(12) Abandon, relinquish any or all rights to, or decline to administer property of no value or of insufficient benefit or value to the trust to justify its collection or continued administration;

(13) With respect to possible liability for violation of environmental law:

a. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

c. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

d. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) Pay or contest any claim, compromise, adjust or otherwise settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) Pay from the trust property taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust and the protection of the trust property;

(16) Exercise elections with respect to federal, state, and local taxes;

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights under that plan, annuity, or life insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and acquire a lien on future distributions for repayment of those loans;

(19) Pledge trust property to guarantee loans made by others to a beneficiary;

(19a) Guarantee loans made by others to a beneficiary;

(19b) Pledge trust property to guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust has an ownership interest.

(19c) Guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust has an ownership interest.

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, limit those powers the appointed trustee may exercise and the duties for which the appointed trustee is responsible, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's estate or, if the beneficiary does not have a general guardian or guardian of the beneficiary's estate, the guardian of the beneficiary's person;

b. Paying it to a custodian under a uniform transfer to minors act or custodial trustee under a uniform custodial trust act and, for that purpose, creating a custodianship or custodial trust for the benefit of the beneficiary;

c. Paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

d. Managing it as a separate fund on the beneficiary's behalf.

A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including the minor or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the trustee;

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares without regard to the income tax basis or other special tax attributes of the assets, as the trustee finds to be most practicable and for the best interests of the distributees, value the trust property for those purposes, and adjust for resulting differences in valuation; and to distribute trust property in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests;

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) Make, execute, and deliver contracts and other instruments, including instruments under seal, that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

(27) Employ as advisors or assistants in the performance of administrative duties, or delegate administrative duties in the manner provided in G.S. 36C-8-807, to persons, firms, and corporations, including agents, auditors, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment advisors, appraisers, custodians, rental agents, realtors, and tax specialists;

(28) Bid on property at a foreclosure sale, or acquire property from a mortgagor or obligor without foreclosure, and retain the property so bid on or taken over without foreclosure;

(29) Divide one trust into several trusts and make distributions from those trusts in the manner provided in G.S. 36C-4-417;

(30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such property; and

(31) Distribute the assets of an inoperative trust consistent with the authority granted under G.S. 28A-22-10.

"**§ 36C-8-817. Distribution upon termination.**

Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

"Article 9.

"Uniform Prudent Investor Act.

"**§ 36C-9-901. Prudent investor rule; applicability.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust that govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.

(c) The following terms or comparable language in a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under this Article: "Chapter 36A", "investments in accordance with Article 15 of Chapter 36A", "investments in accordance with Article 9 of Chapter 36C", "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule". This Article also applies where a trust contains no investment standard.

(d) This Article does not apply to:

(1) Unless the trust provides otherwise by specific reference to this Article:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts that are created by legislative act;

c. Trusts that are created by or under premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under a Uniform Transfers to Minors Act;

e. Transfers under a Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) Trusts imposed or required under another Chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other Chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article.

"**§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.**

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries known to the trustee;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article.

"**§ 36C-9-903. Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

"**§ 36C-9-904. Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Chapter.

"**§ 36C-9-905. Reviewing compliance.**

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

"**§ 36C-9-906. Effect on charitable remainder trusts.**

Nothing in this Article shall prevent the application of Article 4B of this Chapter to a "charitable remainder trust" as defined in G.S. 36C-4B-3(1).

"**§ 36C-9-907. Short title.**

This Article may be cited as the "North Carolina Uniform Prudent Investor Act."

"Article 10.

"Liability of Trustees and Rights of Persons Dealing With Trustees.

"**§ 36C-10-1001. Remedies for breach of trust.**

(a) A violation by a trustee of a duty the trustee owes under a trust is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

(1) Compel the trustee to perform the trustee's duties;

(2) Enjoin the trustee from committing a breach of trust;

(3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) Order a trustee to account;

(5) Appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) Suspend the trustee;

(7) Remove the trustee as provided in G.S. 36C-7-706;

(8) Reduce or deny compensation to the trustee;

(9) Subject to G.S. 36C-10-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) Order any other appropriate relief.

(c) The court may, for cause shown, relieve a trustee from liability for any breach of trust, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for a breach of trust.

"**§ 36C-10-1002. Damages for breach of trust.**

(a) A trustee who commits a breach of trust is liable for the greater of:

(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) The profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

"**§ 36C-10-1003. Liability in absence of breach.**

(a) A trustee is accountable for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to compensation under G.S. 36C-7-708 or payments allowed under G.S. 36C-8-802(f).

(b) Absent a breach of trust, a trustee is not liable for a loss or depreciation in the value of trust property or for not having made a profit.

"**§ 36C-10-1004. Attorneys' fees and costs.**

In a judicial proceeding involving the administration of a trust, the court may award costs and expenses, including reasonable attorneys' fees, as provided in the General Statutes.

"**§ 36C-10-1005. Limitation of action against trustee.**

(a) No proceeding against a trustee for breach of trust may be commenced more than five years after the first to occur of: (i) the removal, resignation, or death of the trustee; (ii) the termination of the beneficiary's interest in the trust; or (iii) the termination of the trust.

(b) Except as provided in subsection (a) of this section, Chapter 1 of the General Statutes governs the limitations of actions on judicial proceedings involving trusts.

"**§ 36C-10-1006. Reliance on trust instrument.**

A trustee who acts in reasonable reliance on the terms of the trust as expressed in a trust instrument is not liable for a breach of trust to the extent that the breach resulted from the reliance.

"**§ 36C-10-1007. Event affecting administration or distribution.**

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

"**§ 36C-10-1008. Exculpation of trustee.**

A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

"§ **36C-10-1009. Beneficiary's consent, release, or ratification.**

(a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not have knowledge of the beneficiary's rights or of the material facts relating to the breach.

(b) No consideration is required for the consent, release, or ratification to be valid.

"§ **36C-10-1010. Limitation on personal liability of trustee.**

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim. Any judgment rendered in favor of a claimant in such a judicial proceeding against a trust may be recovered from the trust property without proof that the trustee could have obtained reimbursement from the trust if the trustee had paid the claim.

(d) A trustee is entitled to indemnity from the trust for any claim, other than a breach of trust, for which the trustee is liable:

(1) If the claim arose from a common incident of activity in which the trustee was properly engaged for the trust;

(2) If the trustee was not personally at fault; or

(3) To the extent that the trustee's actions increased the value of trust property.

(e) A decision by a trustee not to inspect property, or to decline to accept property, shall not create any inference as to liability, under any environmental law, with respect to that property. A trustee shall have no liability for a decrease in value of property in a trust by reason of the trustee's compliance with any environmental law, including reporting requirements.

"§ **36C-10-1011. Interest as general partner.**

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity,

an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership if the fiduciary capacity was disclosed. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written partnership document is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee who holds, in a fiduciary capacity, an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault. This subsection does not apply to additional ownership interests of the trustee held in a nonfiduciary capacity.

(c) If the settlor transfers an existing general partnership interest to a revocable trust, the settlor remains personally liable for partnership obligations as if the settlor were a general partner.

"§ **36C-10-1012. Protection of person dealing with trustee.**

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

(f) A person is not required to obtain a certification under G.S. 36C-10-1013 in order to be entitled to the protections of this section.

"§ **36C-10-1013. Certification of trust.**

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(1) The existence of the trust and the date the trust instrument was executed;
(2) The identity of the settlor, unless withheld under a provision in the trust instrument;
(3) The identity and address of the currently acting trustee;
(4) The powers of the trustee;
(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
(7) The trust's taxpayer identification number; and
(8) The manner of taking title to trust property.

(b) Any trustee may sign or otherwise authenticate a certification of trust.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that the person relying upon the certification holds a copy of all or part of the trust instrument.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(j) In transactions involving real property, a person who acts in reliance upon a certification of trust may require that the certification of trust be executed and acknowledged in a manner that will permit its registration in the office of the register of deeds in the county where the real property is located. The certification of trust need not contain the trust's taxpayer identification number if that taxpayer identification number is also the social security number of a grantor. However, the trust's taxpayer identification number shall be certified by the trustee to the person acting in reliance upon the certification of trust in a manner reasonably satisfactory to that person.

"Article 11.

"Miscellaneous Provisions.

"**§ 36C-11-1101. Uniformity of application and construction.**

In applying and construing this Chapter, consideration may be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 36C-11-1102. Electronic records and signatures.**

The provisions of this Chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of those records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

"**§ 36C-11-1103. Severability clause.**

If any provision of this Chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

SECTION 3. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 36D.**

"**North Carolina Community Trust for Persons With Severe Chronic Disabilities.**

"**§ 36D-1. Title; findings.**

(a) This Article shall be known and may be cited as the "North Carolina Community Trust for Persons With Severe Chronic Disabilities Act".

(b) The General Assembly finds that it is in the public interest to encourage activities by voluntary associations and private citizens that will supplement and augment those services provided by local, State, and federal government agencies in discharge of their responsibilities toward individuals with severe chronic disabilities. The General Assembly further finds that, as a result of changing social, economic, and demographic trends, families of persons with severe chronic disabilities are increasingly aware of the need for a vehicle by which they can assure ongoing individualized personal concern for a severely disabled family member who may survive that disabled person's parents or other family members, and provide for the efficient management of small legacies or trust funds to be used for the benefit of that disabled person. In a number of other states, voluntary associations have established foundations or trusts intended to be responsive to these concerns. Therefore, the General Assembly finds that North Carolina will benefit by the enactment of enabling legislation expressly authorizing the formation of community trusts in accordance with criteria set forth by statute and administered by the Secretary of State, under Chapter 55A of the General Statutes. These community trusts permit the pooling of resources contributed by families or persons with philanthropic intent, along with the reservation of portions of these funds for the use and benefit of designated beneficiaries.

(c) This Article shall be liberally construed and applied to promote its underlying purposes and policies, which are, among others, to:

(1) Encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities;

(2) Ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest;

(3) Facilitate sound administration of trust funds for persons with severe chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;

(4) Provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become incapacitated;

(5) Help make guardians available for persons with severe chronic disabilities who are incompetent, when no other family member is available for this purpose;

(6) Encourage the availability of private resources to purchase for persons with severe chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those that are not available from other sources;

(7) Encourage the inclusion, as beneficiaries of community trusts, of persons who lack resources and whose families are indigent, in a way

that does not diminish the resources available to other beneficiaries whose families have contributed to the trust; and

(8) Remove the disincentives that discourage parents and others from setting aside funds for the future protection of persons with severe chronic disabilities by ensuring that the interest of beneficiaries in community trusts are not considered assets or income that would disqualify them from any governmental or charitable entitlement program with an economic means test.

"§ **36D-2. Definitions.**

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

(1) "Beneficiary" means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.

(2) "Community trust" means a nonprofit organization that offers the following services:

a. Administration of special trust funds for persons with severe chronic disabilities;

b. Follow along services;

c. Guardianship for persons with severe chronic disabilities who are incompetent, when no other family member or immediate friend is available for this purpose; and

d. Advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.

(3) "Follow along services" means (i) those services offered by community trusts that are designed to ensure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, (ii) participation in the development of individualized plans being made by service providers for the beneficiary, and (iii) other similar services consistent with the purposes of this Article.

(4) "Severe chronic disability" means a physical or mental impairment that is expected to give rise to a long-term need for specialized health, social, and other services, and that makes the person with the disability dependent upon others for assistance to secure these services.

(5) "Trustee" means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.

(6) "Surplus trust funds" means funds accumulated in the trust from contributions made on behalf of an individual beneficiary that, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary's lifetime, including the beneficiary's share of administrative costs.

"§ **36D-3. Scope.**

This Article applies to every community trust established in this State. In addition to meeting the other requirements of this Article, every board that administers a community trust shall incorporate as a nonprofit corporation under Chapter 55A of the General Statutes. Except as otherwise provided in this Chapter, Chapter 55A of the General Statutes applies to community trusts.

"**§ 36D-4. Administration; powers and duties.**

(a) Every community trust shall be administered by a board. The board shall be comprised of no less than nine and no more than 21 members, at least one-third of whom are parents or relatives of persons with severe chronic disabilities. No board member shall be a provider of habilitative, health, social, or educational services to persons with severe chronic disabilities or an employee of such a service provider. The board may, however, allow service providers to serve on the board in an advisory capacity. Board members shall be selected, to the maximum extent possible, from geographic areas throughout the area served by the trust.

The certificate of incorporation filed with the Secretary of State under Chapter 55A of the General Statutes shall, in addition to the requirements set forth in that Chapter, demonstrate that the requirements of this section have been met.

(b) Notwithstanding any other law, no trustee may be compensated for services provided as a member of the board of a community trust. No fees or commissions shall be paid to these trustees; however, a trustee may be paid for necessary expenses incurred by the trustee and may receive indemnification as permitted under Chapter 55A of the General Statutes.

(bl) For every community trust incorporated under this Article, the corporation itself is considered the trustee of any funds administered by it. No individual board member is considered to be trustee of any fund deposited on behalf of any individual beneficiary with severe chronic disabilities.

(c) The board shall adopt bylaws that include a declaration delineating the primary geographic area serviced by the trust and the principal services to be provided. The board shall file the bylaws with the Secretary of State.

(d) The board may retain paid staff as it considers necessary to provide follow along services to the extent required by each beneficiary. The community trust may authorize the expenditure of funds for any goods or services, including recreational services, which the board, in its sole discretion, determines will promote the well-being of any beneficiary. The community trust may pay for the burial of any beneficiary. The community trust, however, may not expend funds for any goods or services of comparable quality to those available to any particular beneficiary through any governmental or charitable program, insurance, or other sources. The community trust may expend funds to meet the reasonable costs of administering the community trust.

(e) The community trust is not required to provide services to a beneficiary who is a competent adult and who has refused to accept the services. Further, the community trust shall not provide services of a nature or in a manner that would be contrary to the public policy of this State at the time the services are to be provided. In either case, the community trust may offer alternate services that are consistent with the purposes of this Article and in keeping with the best interests of the beneficiary.

(f) The community trust may accept appointment as guardian of the person, guardian of the estate, or guardian of both on behalf of any beneficiary. If the community trust accepts appointment as guardian of the person of an individual, it shall assign a staff member to carry out its responsibilities as the guardian. The

community trust may, upon request, offer consultative and professional assistance to an individual, private or public guardian of any of its beneficiaries.

(g) The community trust may accept contributions, bequests, and designations under life insurance policies to the community trust on behalf of individuals with severe chronic disabilities for the purpose of qualifying them as beneficiaries.

(h) At the time a contribution, bequest, or assignment of insurance proceeds is made, the trustor shall receive a written statement of the services to be provided to the beneficiary. The statement shall include a starting date for the delivery of services or the condition precedent, such as the death of the trustor, which shall determine the starting date. The statement shall describe the frequency with which services shall be provided and their duration, and the criteria or procedures for modifying the program of services from time to time in the best interests of the beneficiary.

"**§ 36D-5. Accountability.**

Along with the annual report filed with the Secretary of State under Chapter 55A of the General Statutes, the community trust shall file an itemized statement that shows the funds collected for the year, income earned, salaries, other expenses incurred, and the opening and final trust balances. A copy of this statement shall be made available, upon request, to any beneficiary, trustor, or designee of the trustor. In addition, once annually, each trustor or the trustor's designee shall receive a detailed individual statement of the services provided to the trustor's beneficiary during the previous 12 months and the services to be provided during the following 12 months. The community trust shall make a copy of the individual statement available to any beneficiary, upon request.

"**§ 36D-6. Gifts, surplus trust funds.**

The community trust may accept gifts and use surplus trust funds for the purpose of qualifying as beneficiary any indigent person whose family members lack the resources to make a full contribution on that person's behalf. The extent and character of the services and selection of beneficiaries are at the discretion of the community trust. The community trust may not use surplus trust funds to make any charitable contribution on behalf of any beneficiary or any group or class of beneficiaries. The community trust may accept gifts to meet start-up costs, reduce the charges to the trust for the cost of administration, and for any other purpose that is consistent with this Article. Gifts made to the trust for an unspecified purpose shall be used by the community trust either to qualify indigent persons whose families lack the means to qualify them as beneficiaries of the trust or to meet any start-up costs that the trust incurs.

"**§ 36D-7. Special requests on behalf of beneficiary.**

The community trust may agree to fulfill any special requests made on behalf of a beneficiary as long as the requests are consistent with this Article and provided that an adequate contribution has been made for this purpose on behalf of a beneficiary. The community trust may agree to serve as trustee for any individual trust created on behalf of a beneficiary, regardless of whether the trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or any other condition, so long as the individual trust is consistent with the purposes of this Article.

"**§ 36D-8. Irrevocability; impossibility of fulfillment.**

A community trust for persons with severe chronic disabilities is irrevocable, but the trustees in their sole discretion may provide compensation for any contribution to the trust to any trustor who, upon good cause, withdraws a beneficiary designated by the trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust with regard to an individual beneficiary for reasons other than the death of the beneficiary.

"§ **36D-9. Beneficiary's interest in trust not asset for income eligibility determination.**

Notwithstanding any provisions of Chapter 108A of the General Statutes, the beneficiary's interest in any community trust is not considered to be an asset for the purpose of determining income eligibility for any publicly operated program, nor shall that interest be reached in satisfaction of a claim for support and maintenance of the beneficiary. No agency shall reduce the benefits of services available to any individual because that person is the beneficiary of a community trust.

"§ **36D-10. Trust not subject to law against perpetuities; restraints on alienation.**

A community trust shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

"§ **36D-11. Settlement; trustee limitations.**

The community trust shall settle a community trust by filing a final accounting in the superior court. In addition, at any time before the settlement of the final account, the community trust, the Secretary of State, or the Attorney General may bring an action for the dissolution of a nonprofit corporation in the superior court for the purpose of terminating the trust or merging it with another charitable trust.

No trustee or any private individual is entitled to share in the distribution of any of the trust assets upon dissolution, merger, or settlement of the community trust. Upon dissolution, merger, or settlement, the superior court shall distribute all of the remaining net assets of the community trust in a manner that is consistent with the purposes of this Article."

SECTION 4. G.S. 32-28 and G.S. 32-34 are repealed.

SECTION 5. G.S. 28A-13-6 reads as rewritten:

"§ **28A-13-6. Exercise of powers of joint personal representatives by one or more than one.**

~~(a) As used in this section, the term "personal representatives" includes testamentary trustees.~~

(b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.

~~(c) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which such personal representatives qualified, provide that any one or more of the following powers of personal representatives may be exercised by any designated one or more of them:~~

~~(1) Open bank accounts and draw checks thereon;~~

~~(2) Subject to the provisions of G.S. 105-24, enter any safe deposit box of the deceased or any safe deposit box rented by the personal representative or representatives;~~

~~(3) Employ attorneys and accountants;~~

~~(4) List property for taxes and prepare and file State, municipal and county tax returns;~~

~~(5) Collect claims and debts due the estate and give receipts therefor;~~

~~(6) Pay claims against and debts of the estate;~~

~~(7) Compromise claims in favor of or against the estate;~~

~~(8) Have custody of property of the estate.~~

(c1) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which the personal representatives qualified, provide that any designated one or more of the personal representatives may exercise one or more of the following powers:

(1) Establish and maintain bank accounts for the trust and issue checks for the estate.

(2) Maintain inventories, accountings, and income and expense records of the estate.

(3) Enter any safety deposit box rented by the estate.

(4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.

(5) List estate property for taxes and prepare and file tax returns for the trust.

(6) Collect and give receipts for claims and debts of the estate.

(7) Pay debts, claims, costs of administration, and taxes of the estate.

(8) Compromise, adjust, or otherwise settle any claim by or against the trust and release, in whole or in part, a claim belonging to the estate.

(9) Have custody of the estate property.

(10) Perform any function relating to investment of estate assets.

(d) Subject to subsection (b) of this section, if two or more personal representatives own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, ~~his~~ that personal representative's act binds all;

(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

(e) Subject to ~~the provisions of~~ subsections (b), ~~(c)~~ (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which ~~he~~ the personal representative joins at the direction of the majority of the personal representatives, if ~~he~~ that personal representative expressed his or her dissent in writing to any other personal representative at or before the time of such joinder.

(f) No personal representative shall be relieved of liability on his or her bond or otherwise by entering into any agreement under this section."

SECTION 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform Trust Code and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 7.(a) Section 2 of this act becomes effective January 1, 2006, and except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act, applies to (i) all trusts created before, on, or after that date; (ii) all

judicial proceedings concerning trusts commenced on or after that date; and (iii) judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of Chapter 36C of the General Statutes would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of Chapter 36C of the General Statutes does not apply and the superseded law applies.

Except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act, any rule of construction or presumption provided in Chapter 36C of the General Statutes applies to trust instruments executed before the effective date of Section 2 of this act unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act, an act done before the effective date of Section 2 of this act is not affected by Chapter 36C of the General Statutes. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of Section 2 of this act, that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 7.(b) Section 1 and Sections 3 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:48 p.m. on the 15th day of July, 2005.

S.B. 566 **Session Law 2005-193**

AN ACT TO AMEND THE LAW TO FACILITATE THE IMPLEMENTATION OF THE LEARN AND EARN PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction,

employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community ~~colleges~~ colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

SECTION 2. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:49 p.m. on the 15th day of July, 2005.

H.B. 1346 **Session Law 2005-194**

AN ACT TO ENACT THE INTERSTATE COMPACT FOR JUVENILES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7B of the General Statutes is amended by adding the following new Article to read:

"Article 40.

"Interstate Compact for Juveniles.

"**§ 7B-4000. Short title.**

This Article may be cited as "The Interstate Compact for Juveniles".

"**§ 7B-4001. Governor to execute Compact; form of Compact.**

The Governor of North Carolina is authorized and directed to execute a Compact on behalf of the State of North Carolina with any state of the United States legally joining therein in the form substantially as follows:

"Article I.

Purpose.

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this Compact, through means of joint and cooperative action among the compacting states to:

(1) Ensure that the adjudicated juveniles and status offenders subject to this Compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) Return juveniles who have run away, absconded, or escaped from supervision or control, or have been accused of an offense to the state requesting their return;

(4) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) Provide for the effective tracking and supervision of juveniles;

(6) Equitably allocate the costs, benefits, and obligations of the compacting states;

(7) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(8) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this Compact;

(10) Establish a system of uniform data collection on information pertaining to juveniles subject to this Compact that allows access by authorized juvenile justice and criminal justice officials and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(11) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(13) Coordinate the implementation and operation of the Compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this Compact. The provisions of this

Compact shall be reasonably and liberally construed to accomplish the purposes and policies of the Compact.

Article II.

Definitions.

As used in this Compact, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance or for directing or controlling its actions or conduct.

(2) "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this Compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this Compact, the rules adopted by the Interstate Commission, and policies adopted by the State Council under this Compact.

(3) "Compacting State" means any state which has enacted the enabling legislation for this Compact.

(4) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this Compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy Compact Administrator" means the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this Compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the State Council under this Compact.

(7) "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this Compact.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

a. Accused Delinquent. – A person charged with an offense that, if committed by an adult, would be a criminal offense;

b. Adjudicated Delinquent. – A person found to have committed an offense that, if committed by an adult, would be a criminal offense;

c. Accused Status Offender. – A person charged with an offense that would not be a criminal offense if committed by an adult;

d. Adjudicated Status Offender. – A person found to have committed an offense that would not be a criminal offense if committed by an adult; and

e. Nonoffender. – A person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(9) "Noncompacting State" means any state which has not enacted the enabling legislation for this Compact.

(10) "Probation" or "Parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this Compact that is of general

applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III.

Interstate Commission for Juveniles.

(a) The compacting states hereby create the "Interstate Commission for Juveniles." The Commission shall be a body corporate and joint agency of the compacting states. The Commission shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this Compact.

(b) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The Commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio, nonvoting members. The Interstate Commission may provide in its bylaws for such additional ex officio, nonvoting members, including members of other national organizations, in such numbers as shall be determined by the Commission.

(d) Each compacting state represented at any meeting of the Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(e) The Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(f) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rule making and/or amendment to the Compact. The executive committee shall oversee the day-to-day activities of the administration of the Compact managed by an executive director and Interstate Commission staff, administer enforcement and

compliance with the provisions of the Compact, its bylaws and rules, and perform other duties as directed by the Interstate Commission or set forth in the bylaws.

(g) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigative records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) Specifically relate to the Interstate Commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(k) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange, and reporting

requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

Article IV.

Powers and Duties of the Interstate Commission.

(a) The Interstate Commission shall have the following powers and duties:

(1) To provide for dispute resolution among compacting states.

(2) To promulgate rules to effect the purposes and obligations as enumerated in this Compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this Compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this Compact and any bylaws adopted and rules promulgated by the Interstate Commission.

(4) To enforce compliance with the Compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means including, but not limited to, the use of judicial process.

(5) To establish and maintain offices which shall be located within one or more of the compacting states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III of this Compact, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of them.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article VIII of this Compact.

(14) To sue and be sued.

(15) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this Compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the

Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting, and exchanging of data.

(b) The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

Article V.

Organization and Operation of the Interstate Commission.

(a) Bylaws. – The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary;

(3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing "start-up" rules for initial administration of the Compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the Compact.

(b) Officers and Staff. – The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice-chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(c) Qualified Immunity, Defense, and Indemnification. – The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Article VI.

Rule-Making Functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the Compact.

(b) Rule making shall occur pursuant to the criteria set forth in this Article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 16, p. 1 (2000), or such other administrative procedures acts, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

(c) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) Publish the proposed rule's entire text stating the reason for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by 10 or more persons;

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties; and

(5) Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule.

If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the Compact, cause that rule to have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void when all states, as defined in the Compact, have adopted The Interstate Compact for Juveniles.

(g) Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible but no later than 90 days after the effective date of the emergency rule.

Article VII.

Oversight, Enforcement, and Dispute Resolution by the Interstate Commission.

(a) Oversight. – The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this Compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules, and all courts shall take judicial notice of the Compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution. – The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the Compact

as well as issues and activities pertaining to compliance with the provisions of the Compact and its bylaws and rules.

The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the Compact and which may arise among compacting states and between compacting and noncompacting states. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact using any or all means set forth in Article XI of this Compact.

Article VIII.

Finance.

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article IX.

The State Council.

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the Compact within that state.

Article X.

Compacting States, Effective Date, and Amendment.

(a) Any state, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern

Marianas Islands, as defined in Article II of this Compact, is eligible to become a compacting state.

(b) The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the Compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the Compact by all states and territories of the United States.

(c) The Interstate Commission may propose amendments to the Compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XI.

Withdrawal, Default, Termination, and Judicial Enforcement.

(a) Withdrawal. – Once effective, the Compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the Compact by specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this Compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Interstate Commission.

(b) Technical Assistance, Fines, Suspension, Termination, and Default. – If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this Compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(1) Remedial training and technical assistance as directed by the Interstate Commission;

(2) Alternative Dispute Resolution;

(3) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

(4) Suspension or termination of membership in the Compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted, and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice, or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this Compact, the bylaws, or duly promulgated rules, and any other grounds designated in Commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Commission, the defaulting state shall be terminated from the Compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.

Within 60 days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the majority and minority leaders of the defaulting state's legislature, and the state council of the termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. – The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices to enforce compliance with the provisions of the Compact and its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(d) Dissolution of Compact. – The Compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the Compact to one compacting state.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded, and any surplus funds shall be distributed in accordance with the bylaws.

Article XII.

Severability and Construction.

(a) The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

(b) The provisions of this Compact shall be liberally construed to effectuate its purposes.

Article XIII.

Binding Effect of Compact and Other Laws.

(a) Other Laws. – Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this Compact.

All compacting states' laws, other than state Constitutions and other interstate compacts, conflicting with this Compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact. – All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this Compact becomes effective."

"§ **7B-4002. Implementation of the Compact.**

(a) The North Carolina State Council for Interstate Juvenile Supervision is hereby established. The Secretary of the Department of Juvenile Justice and Delinquency Prevention, or the Secretary's designee, shall serve as the Compact Administrator for the State of North Carolina and as North Carolina's Commissioner to the Interstate Commission. The Secretary of the Department of Juvenile Justice and Delinquency Prevention, or the Secretary's designee, is a member of the State Council and serves as chairperson of the State Council. In addition to the chairperson, the State Council shall consist of 10 members as follows:

(1) One member representing the executive branch, to be appointed by the Governor;

(2) One member from a victim's assistance group, to be appointed by the Governor;

(3) One at-large member, to be appointed by the Governor;

(4) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;

(5) One member of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(6) A district court judge, to be appointed by the Chief Justice of the Supreme Court; and

(7) Four members representing the juvenile court counselors, to be appointed by the Secretary of the Department of Juvenile Justice and Delinquency Prevention.

(b) The State Council shall meet at least twice a year and may also hold special meetings at the call of the chairperson. All terms are for three years.

(c) The State Council may advise the Compact Administrator on participation in the Interstate Commission activities and administration of the Compact.

(d) The members of the State Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses in accordance with the policies of the Office of State Budget and Management.

(e) The State Council shall act in an advisory capacity to the Secretary of the Department of Juvenile Justice and Delinquency Prevention concerning this State's

participation in Interstate Commission activities and other duties as may be determined by each member state, including recommendations for policy concerning the operations and procedures of the Compact within this State.

(f) The Governor shall by executive order provide for any other matters necessary for implementation of the Compact at the time that it becomes effective, and, except as otherwise provided for in this section, the State Council may promulgate rules or regulations necessary to implement and administer the Compact."

SECTION 2. Article 28 of Chapter 7B of the General Statutes is repealed.

SECTION 3. The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall notify the Revisor of Statutes when The Interstate Compact for Juveniles becomes effective under the terms of the Compact. The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall notify the Revisor of Statutes when The Interstate Compact for Juveniles has been adopted by all states, as defined in the Compact.

SECTION 4. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. The Department of Juvenile Justice and Delinquency Prevention shall implement the provisions of this act with funds that are otherwise appropriated or available to the Department.

SECTION 5. Section 1 of this act becomes effective only when 35 states have adopted The Interstate Compact for Juveniles, as set forth in the Compact. Section 2 of this act becomes effective only when all states, as defined in the Compact, have adopted The Interstate Compact for Juveniles. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:49 p.m. on the 15th day of July, 2005.

S.B. 630 **Session Law 2005-195**

AN ACT TO MODIFY THE STATUTES GOVERNING RESIDENTIAL SCHOOLS TO MAKE THEIR ACCOUNTABILITY SYSTEM AND THEIR SCHOOL IMPROVEMENT PLANS LIKE THOSE OF OTHER PUBLIC SCHOOLS, AND TO MAKE OTHER TECHNICAL OR CONFORMING CHANGES TO THOSE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-146.1(b) reads as rewritten:

"(b) The following definitions apply in this Part:

(1) ABC's Program or Program. – The School-Based Management and Accountability Program developed by the State Board.

(2) Department. – The Department of Health and Human Services.

(3) Instructional personnel. ~~– Principals, assistant~~ Assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants employed in a residential school.

(4) Participating school. – A residential school that is required to participate in the ABC's Program.

(5) Residential school personnel. – The individuals included in G.S. 143B-146.16(a)(2).

(6) Schools. – The residential schools under the control of the Secretary.
(7) Secretary. – The Secretary of Health and Human Services.
(8) State Board. – The State Board of Education.
(9) Superintendent. – ~~The individual designated by the Secretary to administer a residential school.~~The Superintendent of the Office of Education Services of the Department of Health and Human Services."

SECTION 2. G.S. 143B-146.2(a) reads as rewritten:

"(a) The Governor Morehead School and the schools for the deaf shall participate in the ABC's Program. The Secretary, in consultation with the General Assembly and the State Board, may designate other residential schools that must participate in the ABC's Program. The primary goal of the ABC's Program is to improve student performance. The Program is based upon an accountability, recognition, assistance, and intervention process in order to hold each participating school, its ~~superintendent,~~ principal, and the instructional personnel accountable for improved student performance in that school."

SECTION 3. G.S. 143B-146.4 reads as rewritten:

"§ **143B-146.4. Performance recognition.**

(a) ~~The superintendent and instructional personnel assigned to participating schools that achieve or exceed a level of expected growth to be determined by the State Board are eligible for financial awards in amounts set by the State Board. Participating schools and personnel shall not be required to apply for these awards.~~ The personnel in participating schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, "personnel" includes the principal and the instructional personnel (i) serving students in one or more of the grades kindergarten through 12 or (ii) assigned to a prekindergarten program that is located within the participating school and is designed to prepare students for kindergarten at that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure ~~for:~~ for awards to personnel.

~~(1) Awards to the personnel; or~~
~~(2) The purposes authorized in a plan that has been:~~
~~a. Developed and voted on by the superintendent and instructional personnel in the same manner that a school improvement plan is approved under G.S. 143B-146.12;~~
~~b. Approved by a majority of the personnel who vote on the plan; and~~
~~c. Submitted to and approved by the Secretary.~~

~~The Secretary shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.~~

The Secretary is encouraged to make these awards to each eligible person no later than the first regular teacher payroll following receipt of the funds, and shall make these awards to each eligible person no later than the second regular teacher payroll following the receipt of the funds."

SECTION 4. G.S. 143B-146.6(b) reads as rewritten:

"(b) When assigned to an identified low-performing school, an assistance team shall:

…

(2) Evaluate at least semiannually the ~~superintendent~~ principal and instructional personnel assigned to the school and make findings and recommendations concerning their performance.

…"

SECTION 5. G.S. 143B-146.7(a) reads as rewritten:

"(a) Within 30 days of the initial identification of a school as low-performing, whether by the Secretary under G.S. 143B-146.5(b) or by the State Board under G.S. 143B-146.5(a), the Secretary shall take one of the following actions concerning the school's ~~superintendent:~~ principal: (i) decide whether the ~~superintendent~~ principal should be retained in the same position, (ii) decide whether the ~~superintendent~~ principal should be retained in the same position and a plan of remediation should be developed, (iii) decide whether the ~~superintendent~~ principal should be transferred, or (iv) proceed under the State Personnel Act to dismiss or demote the ~~superintendent.~~ principal. The ~~superintendent~~ principal may be retained in the same position without a plan for remediation only if the ~~superintendent~~ principal was in that position for no more than two years before the school is identified as low-performing. The ~~superintendent~~ principal shall not be transferred to another position unless (i) it is in a ~~superintendent~~ principal position in which the ~~superintendent~~ principal previously demonstrated at least two years of success, (ii) there is a plan to evaluate and provide remediation to the ~~superintendent~~ principal for at least one year following the transfer to assure the ~~superintendent~~ principal does not impede student performance at the school to which the ~~superintendent~~ principal is being transferred; and (iii) the parents of the students at the school to which the ~~superintendent~~ principal is being transferred are notified. The ~~superintendent~~ principal shall not be transferred to another low-performing school. The Secretary may, at any time, proceed under the State Personnel Act for the dismissal of any ~~superintendent~~ principal who is assigned to a low-performing school to which an assistance team has been assigned. The Secretary shall proceed under the State Personnel Act for the dismissal of any ~~superintendent~~ principal when the Secretary receives from the assistance team assigned to that school two consecutive evaluations that include written findings and recommendations regarding the ~~superintendent's~~ principal's inadequate performance. The Secretary shall order the dismissal of the ~~superintendent~~ principal if the Secretary determines from available information, including the findings of the assistance team, that the low performance of the school is due to the ~~superintendent's~~ principal's inadequate performance. The Secretary may order the dismissal of the ~~superintendent~~ principal if (i) the Secretary determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the ~~superintendent.~~ principal. The Secretary may order the dismissal of a ~~superintendent~~ principal before the assistance team assigned to the ~~superintendent's~~ principal's school has evaluated that ~~superintendent~~ principal if the Secretary determines from other available information that the low performance of the school is due to the ~~superintendent's~~ principal's inadequate performance. The burden of proof is on the ~~superintendent~~ principal to establish that the factors leading to the school's low performance were not due to the ~~superintendent's~~ principal's inadequate performance. The burden of proof is on the Secretary to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school. Two

consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the ~~superintendent.~~ principal. Within 15 days of the Secretary's decision concerning the ~~superintendent,~~ principal, but no later than September 30, the Secretary shall submit to the State Board a written notice of the action taken and the basis for that action."

SECTION 6. G.S. 143B-146.8 reads as rewritten:

"§ **143B-146.8. Evaluation of certificated personnel and ~~superintendents;~~ principals; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The ~~superintendent~~ principal shall evaluate at least once each year all certificated personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the ~~superintendent~~ Superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have not attained career status. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of noncertificated personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a certificated employee in a participating school that has been identified as low-performing receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the ~~superintendent~~ principal that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the ~~superintendent~~ principal recommend to the Secretary that the employee be dismissed or demoted. The ~~superintendent~~ principal shall determine whether to develop an action plan or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating certificated

personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the ~~superintendent~~ principal or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the ~~superintendent~~ principal shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

…

(f) Evaluation of ~~Superintendents.~~ Principals. – Each year the Secretary or the ~~Secretary's designee~~ Superintendent shall evaluate the ~~superintendents.~~principals."

SECTION 7. G.S. 143B-146.9 reads as rewritten:

"§ **143B-146.9. Assessment teams.**

The State Board shall develop guidelines for the Secretary to use to create assessment teams. The Secretary shall assign an assessment team to every low-performing school that has not received an assistance team. The Secretary shall ensure that assessment team members are trained in the proper administration of the employee evaluation used in the participating schools. If service on an assessment team is an additional duty for an employee of a local school administrative unit or an employee of a residential school, the Secretary may pay the employee for that additional work.

Assessment teams shall:

(1) Conduct evaluations of certificated personnel in low-performing schools;

(2) Provide technical assistance and training to principals ~~and superintendents~~ who conduct evaluations of certificated personnel;

(3) Develop action plans for certificated personnel; and

(4) Assist principals ~~and superintendents~~ in the development and implementation of action plans."

SECTION 8. G.S. 143B-146.10 reads as rewritten:

"§ **143B-146.10. Development of performance standards and criteria for certificated personnel.**

The State Board, in consultation with the Secretary, shall revise and develop uniform performance standards and criteria to be used in evaluating certificated personnel, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The Secretary shall develop guidelines for evaluating ~~superintendents.~~ principals. The guidelines shall include criteria for evaluating a ~~superintendent's~~principal's effectiveness in providing safe schools and enforcing student discipline."

SECTION 9. G.S. 143B-146.12 reads as rewritten:

"§ **143B-146.12. Development and approval of school improvement plans.**

(a) In order to improve student performance, each ~~participating~~ school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 143B-146.3. The ~~superintendent,~~principal of each school, instructional personnel, and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

(a1) Representatives of the instructional and residential life personnel shall be elected by their respective groups by secret ballot.

(b) Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with ~~teachers,~~instructional and residential life personnel, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

(c) The strategies for improving student performance shall include the following:

(1) A plan for the use of staff development funds that may be made available to the school ~~by the Secretary to meet the goals for that school under the ABC's Program and~~ to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while teachers are meeting with mentors;

(1a) A plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when a child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading ability, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level.

(2) A comprehensive plan to encourage parent involvement.

(3) A safe school plan designed to provide that the school is safe, secure, and orderly, that there is a climate of respect in the school, and that appropriate personal conduct is a priority for all students and all residential school personnel. This plan shall include components similar to those listed in G.S. 115C-105.47(b).

(4) A plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

(d) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The ~~superintendent~~ principal of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The ~~superintendent~~ principal shall submit the school improvement plan to the Superintendent for presentation to the Secretary only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

(e) The Secretary shall accept or reject the school improvement plan. The Secretary shall not make any substantive changes in any school improvement plan that the Secretary accepts. If the Secretary rejects a school improvement plan, the Secretary shall state with specificity the reasons for rejecting the ~~plan;~~plan to the Superintendent to share with the principal; the school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the Superintendent for presentation to the Secretary to accept or reject. Within 60 days after the initial submission of the school improvement plan to the Secretary, the Secretary shall accept the plan or shall ~~designate a person to~~direct that the Superintendent work with the school improvement team to resolve the disagreements. If there is no resolution within 30 days, then the Secretary may develop a school improvement plan for the school; however, the General Assembly urges the Secretary to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

(f) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the Secretary finds that a school improvement plan is impeding student performance at a school, the Secretary may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

(g) Any funds the Secretary makes available to a school to meet the goals for that school under the ABC's Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

(h) The ~~Secretary,~~ Superintendent, in consultation with the State Board, shall develop a list of recommended strategies that it determines to be effective which building level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.

(i) Once developed, the ~~Secretary~~ principal shall ensure the plan is available and accessible to parents and the school community."

SECTION 10. G.S. 143B-146.15 reads as rewritten:

"§ **143B-146.15. Duty to report certain acts to law enforcement.**

When the ~~superintendent~~ principal has personal knowledge or actual notice from residential school personnel or other reliable source that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the ~~superintendent~~ principal shall immediately report the act to the appropriate local law enforcement agency. Failure to report under this section is a Class 3 misdemeanor. For purposes of this section, "school property" shall include any building, bus, campus,

grounds, recreational area, or athletic field, in the charge of the ~~superintendent~~ principal or while the student is under the supervision of school personnel. It is the intent of the General Assembly that the ~~superintendent~~ principal notify the Secretary or the ~~Secretary's designee~~ Superintendent of any report made to law enforcement under this section."

SECTION 11. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:53 p.m. on the 15th day of July, 2005.

S.B. 316 **Session Law 2005-196**

AN ACT TO MAKE PERMANENT A TEMPORARY ACT THAT PROVIDED THAT GASOLINE THAT MEETS FEDERAL REQUIREMENTS GOVERNING THE CONCENTRATION OF SULFUR IN GASOLINE SHALL BE DEEMED TO COMPLY WITH STATE REQUIREMENTS GOVERNING THE CONCENTRATION OF SULFUR IN GASOLINE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2002-75 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. ~~Section 2 of this act expires 1 January 2006.~~"

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

In the General Assembly read three times and ratified this the 7th day of July, 2005.

Became law upon approval of the Governor at 12:57 p.m. on the 15th day of July, 2005.

S.B. 92 **Session Law 2005-197**

AN ACT TO AUTHORIZE WATAUGA COUNTY TO LEVY AN OCCUPANCY TAX IN A TAX DISTRICT COMPRISING THE UNINCORPORATED AREAS OF THE COUNTY AND TO INCREASE THE FORCE ACCOUNT LIMIT FOR WATAUGA COUNTY AND THE TOWN OF BOONE FOR DEVELOPMENT OF ANNE MARIE DRIVE PARK.

The General Assembly of North Carolina enacts:

PART I. WATAUGA COUNTY DISTRICT U OCCUPANCY TAX.

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

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

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Watauga County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Watauga County District U shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Watauga County District U Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Watauga County District U. None of the proceeds may be used to promote travel or tourism in areas within Watauga County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

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

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

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

SECTION 5.(a) Watauga County District U Tourism Development Authority. – Appointment and Membership. – The Watauga County Board of Commissioners shall adopt a resolution creating the Watauga County District U Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the district. The board of commissioners shall designate one member of

the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Watauga County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

PART II. FORCE ACCOUNT LIMIT.

SECTION 7. G.S. 143-135 reads as rewritten:

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

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty-five thousand dollars ($125,000) or the total cost of labor on the project does not exceed fifty thousand dollars ($50,000).~~ seven hundred fifty thousand dollars ($750,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 8. Section 7 of this act applies only to a joint project between Watauga County and the Town of Boone to develop Anne Marie Drive Park.

SECTION 9. Section 7 of this act applies to Watauga County and the Town of Boone only.

PART III. EFFECTIVE DATE.

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

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law on the date it was ratified.

H.B. 563 **Session Law 2005-198**

AN ACT PERMITTING THE COMMUNITY COLLEGE SYSTEM TO PROVIDE COURSEWORK TO PERSONS ENTERING THE TEACHING PROFESSION BY LATERAL ENTRY, AND TO REDUCE FROM FIVE YEARS TO THREE YEARS THE LENGTH OF A PROVISIONAL TEACHING CERTIFICATE ISSUED TO A LATERAL ENTRY TEACHER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296(c) reads as rewritten:

"(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. ~~Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation.~~ Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than ~~five~~ three years and shall be required to obtain certification before contracting for a ~~sixth~~ fourth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates."

SECTION 2. G.S. 115C-296(c), as amended by Section 1 of this act, reads as rewritten:

"(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than three years and shall be required to obtain certification before contracting for a fourth year of service with any local administrative unit in this State.

(c1) The State Board of Community Colleges may provide a program of study for lateral entry teachers to complete the coursework necessary to earn a teaching certificate. To this end, the State Board of Education, in consultation with the State Board of Community Colleges, shall establish a competency-based program of study for lateral entry teachers to be implemented within the Community College System no later than May 1, 2006. This program must meet standards set by the State Board of Education.

The State Board of Community Colleges and the State Board of Education shall jointly identify the community college courses and the teacher education program

courses that are necessary and appropriate for inclusion in the community college program of study for lateral entry teachers. To the extent possible, any courses that must be completed through an approved teacher education program shall be taught on a community college campus or shall be available through distance learning.

In order to participate in the community college program of study for lateral entry teachers, an individual must:

(1) Hold at least a bachelors degree from a regionally accredited institution of higher education;

(2) Have completed the bachelors degree at least five years before undertaking the program of study under this subsection; and

(3) Hold a lateral entry teaching certificate and be employed as a teacher in a local school administrative unit.

An individual who successfully completes this program of study and meets all other requirements of certification set by the State Board of Education shall be recommended for a North Carolina teaching certificate.

(c2) It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates."

SECTION 3. G.S. 115D-5 is amended by adding a new subsection to read:

"(p) The North Carolina Community College System may offer courses, in accordance with the lateral entry program of study established under G.S. 115C-296(c1), to individuals who choose to enter the teaching profession by lateral entry."

SECTION 4. The State Board of Education and the State Board of Community Colleges shall submit annually to the Joint Legislative Education Oversight Committee a report on the community college program of study for lateral entry teachers established under this act. The initial report is due no later than April 1, 2006. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should continue and, if so, must include the reasons for its continuation and any recommended legislative changes needed to enhance the program.

SECTION 5. This act is effective when it becomes law. Section 1 of this act applies to provisional teaching certificates issued on or after that date. Sections 2, 3, and 4 of this act expire July 1, 2011.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 11:16 a.m. on the 19th day of July, 2005.

S.B. 170 **Session Law 2005-199**

AN ACT AMENDING THE CHARTER OF THE TOWN OF WACO TO CORRECTLY IDENTIFY THE CENTER OF TOWN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of the Charter of the Town of Waco, being Chapter 147 of the 1907 Private Laws, reads as rewritten:

"Sec. 2. ~~That the incorporate limits of said corporation of Waco shall remain hereafter as formerly defined and located, as follows: All that territory covered by and included in the circle having as its center the railroad bridge in the town of Waco, and made by a radius extending one-half of a mile in length from said center; that is, all that territory within a radius of one-half mile from the railroad bridge, the present center of the Town of Waco.~~The center of the Town of Waco is described as follows: Mag nail set in the centerline of the intersection of Cherryville Road (NC Hwy. 150) and Main Street (S.R. 1001). Grid coordinates: Y=595,434.5286; X=1,276,039.0584. Latitude=35º21'42.234723"; Longitude=81º25'42.607645"."

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

In the General Assembly read three times and ratified this the 19th day of July, 2005.

Became law on the date it was ratified.

S.B. 474 **Session Law 2005-200**

AN ACT AUTHORIZING THE CITIES OF GREENVILLE AND HIGH POINT TO ORDER DWELLINGS DETERMINED UNFIT FOR HUMAN HABITATION REPAIRED OR DEMOLISHED AFTER A PERIOD OF SIX MONTHS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-443(5b) reads as rewritten:

"(5b) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of ~~one year~~six months pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of ~~one year~~six months pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such ~~one year~~six-month period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

~~This subdivision applies to the Cities of Eden, Greenville, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.~~"

SECTION 2. This act applies to the Cities of Greenville and High Point only.

SECTION 3. S.L. 1997-414, as it applies to the City of Greenville, is repealed.

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

In the General Assembly read three times and ratified this the 19th day of July, 2005.

Became law on the date it was ratified.

H.B. 1631 **Session Law 2005-201**

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 2005; APPROPRIATING FUNDS FOR INCREASES IN THE AVERAGE DAILY MEMBERSHIP IN THE PUBLIC SCHOOLS AND IN UNIVERSITY AND COMMUNITY COLLEGE ENROLLMENT; DIRECTING

THE STATE CONTROLLER TO TRANSFER OVERREALIZED DISPROPORTIONATE SHARE PAYMENTS TO NONTAX REVENUE; AND EXTENDING THE FINAL MATURITY OF CERTAIN GLOBAL TRANSPARK DEBT FROM JULY 31, 2005, UNTIL AUGUST 31, 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of S.L. 2005-144 reads as rewritten:

"**SECTION 10.** Except as otherwise provided, Parts I through VI of this act become effective July 1, 2005, and expire ~~July 20, 2005.~~ August 5, 2005. Except as otherwise provided, the remainder of this act becomes effective June 30, 2005."

SECTION 2. G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

…

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than ~~July 31, 2005.~~ August 31, 2005. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss."

SECTION 3. Effective July 1, 2005, there is appropriated from the General Fund for the 2005-2006 fiscal year the following:

(1) $125,000,000 to the Department of Public Instruction to fully fund increases in average daily membership in public schools, subject to adjustment by the General Assembly.

(2) $7,802,343 to the Community Colleges System Office to fully fund the community college enrollment increase.

(3) $72,753,678 to the Board of Governors of The University of North Carolina for increased enrollment.

(4) $1,596,000 to the Board of Governors of The University of North Carolina to increase the State Contractual Scholarship Fund by fifty dollars ($50.00) per student in private college.

(5) $1,395,488 to the Board of Governors of The University of North Carolina to fund an increase in enrollment growth in North Carolina residents attending private colleges and universities in the State.

SECTION 4. Notwithstanding Section 10.21(b) of S.L. 2003-284, the State Controller shall transfer the sum of eleven million one hundred nine thousand eight hundred thirty-four dollars ($11,109,834) in disproportionate share payments received by State hospitals from the Disproportionate Share Reserve Fund to nontax revenue budget code 19961. This section becomes effective June 30, 2005.

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2005.

Became law upon approval of the Governor at 6:51 p.m. on the 19th day of July, 2005.

S.B. 338 **Session Law 2005-202**

AN ACT AUTHORIZING THE TOWN OF AHOSKIE TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE TOWN'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 1999-58, as amended by S.L. 2000-33, S.L. 2000-38, S.L. 2001-107, S.L. 2003-77, S.L. 2003-80, and S.L. 2005-81, reads as rewritten:

"Section 2. This act applies to the Towns of Ahoskie, Ayden, Leland, and Pineville, and to the Cities of Durham, Gastonia, High Point, Lexington, Monroe, Roanoke Rapids, Rocky Mount, and Winston-Salem only."

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

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law on the date it was ratified.

H.B. 1776 **Session Law 2005-203**

AN ACT TO PUT A MORATORIUM ON THE JACKSON COUNTY AIRPORT AUTHORITY ENTERING INTO CONTRACTS RELATING TO THE HANGAR CONSTRUCTION PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. The Jackson County Airport Authority may not, prior to September 1, 2005, enter into any contract relating to the hangar construction project or any part of it, including site preparation.

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

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law on the date it was ratified.

H.B. 1400 **Session Law 2005-204**

AN ACT TO INCREASE THE PENALTY FOR PASSING A STOPPED SCHOOL BUS AND TO MAKE SCHOOL BUS STOPS SAFER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217 reads as rewritten:

"(a) ~~The driver of any vehicle upon approaching from any direction on the same street, highway, or public vehicular area any school bus (including privately owned~~

~~buses transporting children and school buses transporting senior citizens under G.S. 115C-243), while the bus is displaying its mechanical stop signal or flashing red stoplights, and is stopped for the purpose of receiving or discharging passengers, shall bring the vehicle to a full stop before passing or attempting to pass the bus, and shall remain stopped until the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has moved on.~~When a school bus is displaying its mechanical stop signal or flashing red lights and the bus is stopped for the purpose of receiving or discharging passengers, the driver of any other vehicle that approaches the school bus from any direction on the same street, highway, or public vehicular area shall bring that other vehicle to a full stop and shall remain stopped. The driver of the other vehicle shall not proceed to move, pass, or attempt to pass the school bus until after the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has started to move.

(b) ~~The provisions of this section are applicable~~ For the purpose of this section, a school bus includes a public school bus transporting children or school personnel, a public school bus transporting senior citizens under G.S. 115C-243, or a privately owned bus transporting children. This section applies only in the event the school bus bears upon the front and rear a plainly visible sign containing the words ~~"school bus" in letters not less than eight inches in height.~~'school bus.'

(c) Notwithstanding ~~the provisions of~~ subsection (a) of this section, the driver of a vehicle traveling in the opposite direction from the school bus, upon any road, highway or city street ~~which~~ that has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space (including a center lane for left turns if the roadway consists of at least four more lanes) or by a physical barrier, need not stop upon meeting and passing any school bus ~~which~~ that has stopped in the roadway across ~~such~~ the dividing space or physical barrier.

(d) It shall be unlawful for any school bus driver to stop and receive or discharge passengers or for any principal or superintendent of any school, routing a school bus, to authorize the driver of any school bus to stop and receive or discharge passengers upon any roadway described by subsection (c) of this section where passengers would be required to cross the roadway to reach their destination or to board the bus; provided, that passengers may be discharged or received at points where pedestrians and vehicular traffic are controlled by adequate stop-and-go traffic signals.

(e) ~~Any~~ Except as provided in subsection (g) of this section, any person violating ~~the provisions of~~ this section shall be guilty of a Class ~~2~~1 misdemeanor.

(f) Expired.

(g) Any person who violates subsection (a) of this section and willfully strikes any person causing serious bodily injury to that person shall be guilty of a Class I felony."

SECTION 2. This act becomes effective September 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 11:18 a.m. on the 21st day of July, 2005.

H.B. 1032 **Session Law 2005-205**

AN ACT TO CLARIFY THE PERMISSIBLE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS AND TO PROVIDE FOR TRAINING IN MANAGEMENT OF STUDENT BEHAVIOR.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Deborah Greenblatt Act".

SECTION 2. Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ **115C-391.1. Permissible use of seclusion and restraint.**

(a) It is the policy of the State of North Carolina to:

(1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.

(2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

(3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.

(4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.

(5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) The following definitions apply in this section:

(1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.

(2) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

a. Significant physical harm, such as tissue damage, physical illness, or death.

b. Serious, foreseeable long-term psychological impairment.

c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

(4) "IEP" means a student's Individualized Education Plan.

(5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(9) "School personnel" means:

a. Employees of a local board of education.

b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.

c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:

a. Physically prevented from leaving by locking hardware or other means.

b. Not capable of leaving due to physical or intellectual incapacity.

(11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:

a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

b. As reasonably needed to maintain order or prevent or break up a fight.

c. As reasonably needed for self-defense.

d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.

e. As reasonably needed to escort a student safely from one area to another.

f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.

g. As reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:

a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.

b. When using seat belts or other safety restraints to secure students during transportation.

c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

d. As reasonably needed for self-defense.

e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:

a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.

b. As reasonably needed to maintain order or prevent or break up a fight.

c. As reasonably needed for self-defense.

d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.

e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and

1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.

2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.

3. The space in which the student is confined has been approved for such use by the local education agency.

4. The space is appropriately lighted.

5. The space is appropriately ventilated and heated or cooled.
6. The space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. – Isolation is permitted as a behavior management technique provided that:

(1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.

(2) The duration of the isolation is reasonable in light of the purpose of the isolation.

(3) The student is reasonably monitored while in isolation.

(4) The isolation space is free of objects that unreasonably expose the student or others to harm.

(g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. – The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures governing discipline under G.S. 115C-391(a).

(j) Notice, Reporting, and Documentation.

(1) Notice of procedures. – Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.
2. Any prohibited use of mechanical restraint.
3. Any use of physical restraint resulting in observable physical injury to a student.
4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:

a. The date, time of day, location, duration, and description of the incident and interventions.

b. The events or events that led up to the incident.

c. The nature and extent of any injury to the student.

d. The name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense."

SECTION 3. G.S. 115C-296 reads as rewritten:

"§ **115C-296. Board sets certification requirements.**

…

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for

continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for all students ~~who do not major in special education~~ include demonstrated competencies in (i) the identification and education of children with ~~learning disabilities.~~disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

…

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

…."

SECTION 4. G.S. 115C-105.47(b)(9) reads as rewritten:

"(b) Each plan shall include each of the following components:

…

(9) Professional development clearly matched to the goals and objectives of the plan. This professional development shall include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior. Appropriate school personnel may include, but is not limited to, teachers, teacher assistants, school administrators, bus drivers, school resource officers, school psychologists, and school counselors. The training shall include instruction in positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. The appropriate personnel with priority for the training shall include those staff members who are most likely to be called upon to prevent or address disruptive or dangerous student behavior. Each local board of education shall include in this component of its safe school plan procedures to evaluate the effectiveness of this training in preventing or addressing disruptive or dangerous student behavior. Local boards of education are encouraged to use available sources of discretionary revenue to implement the plan to train personnel in the management of disruptive or dangerous student behavior. Local boards may only be required to implement the behavior management training component of the plan to the extent that funds have been appropriated for this purpose by the General Assembly or by local units of government. By January 1, 2006, local boards of education shall amend their safe school plans to include this training component."

SECTION 5. G.S. 115C-47 is amended by adding a new subdivision to read:

"§ **115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

…

(45) To Report Certain Incidents of Seclusion and Restraint. – Local boards of education shall maintain a record of incidents reported under G.S. 115C-391.1(j)(4) and shall provide this information annually to the State Board of Education."

SECTION 6. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each

liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 7. Except as otherwise provided, this act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 14th day of July, 2005.

Became law upon approval of the Governor at 1:51 p.m. on the 20th day of July, 2005.

H.B. 654 **Session Law 2005-206**

AN ACT TO ENHANCE THE CONFIDENTIAL TREATMENT OF INSURANCE MARKET CONDUCT ANALYSIS AND FINANCIAL ANALYSIS FILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-2-240. Market conduct analysis, financial analysis, and related information not public record.**

(a) Notwithstanding Chapter 132 of the General Statutes, all market analysis, documents arising from market conduct action, and financial analysis documents, ratios, programs, findings, and other information in the custody of the Department are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence or except as provided in G.S. 58-2-128 and G.S. 58-2-132(g) through (j). The Commissioner, however, may use these documents, materials, findings, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(b) As used in this Article:

(1) 'Market analysis' means a process whereby individuals employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a

baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

(2) 'Market conduct action' means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or indications from market analysis include: correspondence with insurer; insurer interviews, information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this section."

SECTION 2. G.S. 58-2-132(f) reads as rewritten:

"(f) All working papers, information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in connection with an ~~examination~~ examination, market analysis, market conduct action, or financial analysis shall be given confidential treatment, are not subject to subpoena, and shall not be made public by the Commissioner or any other person. The Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties."

SECTION 3. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 14th day of July, 2005.

Became law upon approval of the Governor at 1:52 p.m. on the 20th day of July, 2005.

S.B. 748 **Session Law 2005-207**

AN ACT TO AMEND THE PROCEDURE FOR IMPLEMENTING AN ORDER FOR ELECTRONIC SURVEILLANCE, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES IT IS NOT NECESSARY TO IDENTIFY THE PLACE WHERE THE COMMUNICATION WILL BE INTERCEPTED BY ELECTRONIC SURVEILLANCE, AND ALSO TO PROVIDE THE TIME FRAME WITHIN WHICH THE ELECTRONIC SURVEILLANCE IN AN UNDISCLOSED LOCATION MAY BEGIN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-291(d) reads as rewritten:

"(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

(1) The identity of the office requesting the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:
   a. Details as to the particular offense that has been, or is being committed;
   b. Except as provided in G.S. 15A-294(i), a ~~A~~ particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
   c. A particular description of the type of communications sought to be intercepted; and
   d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results."

SECTION 2. G.S. 15A-293(a) reads as rewritten:

"(a) Upon application by the Attorney General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) Except as provided in G.S. 15A-294(i), there ~~There~~ is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of

such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection."

SECTION 3. G.S. 15A-293(c) reads as rewritten:

"(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such 30-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension ~~may~~ shall be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than ~~15~~30 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days, ~~days or 15 days,~~ as is appropriate. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this Article may be conducted in whole or in part by State or federal government personnel, or by an individual operating under a contract with the State or federal government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception."

SECTION 4. G.S. 15A-294 is amended by adding the following new subsections to read:

"(i) The requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(1) In the case of an application with respect to the interception of an oral communication:
   a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
   b. The application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
   c. The judicial review panel finds that the specification is not practical.

(2) In the case of an application with respect to a wire or electronic communication:
   a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
   b. The application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

c. The judicial review panel finds that the showing has been adequately made; and

d. The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which the communication will be or was transmitted.

(j) An interception of a communication under an order with respect to which the requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) do not apply by reason of subdivision (i)(1) of this section shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subdivision (i)(2) of this section may move the court to modify or quash the order on the grounds that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously."

SECTION 5. This act becomes effective December 1, 2005.

In the General Assembly read three times and ratified this the 13th day of July, 2005.

Became law upon approval of the Governor at 1:54 p.m. on the 20th day of July, 2005.

S.B. 532 **Session Law 2005-208**

AN ACT TO AGGRAVATE THE PENALTY FOR THE LARCENY, POSSESSION, OR RECEIVING OF GOODS VALUED AT MORE THAN THREE HUNDRED DOLLARS FROM A PERMITTED CONSTRUCTION SITE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-72.6. Felonious larceny, possession, or receiving of stolen goods from a permitted construction site.**

(a) A person is guilty of a Class I felony if he commits any of the following offenses, where the goods are valued in excess of three hundred dollars ($300.00) but less than one thousand dollars ($1,000):

(1) Larceny of goods from a permitted construction site.

(2) Possessing or receiving of stolen goods, with actual knowledge or having reasonable grounds to believe that the goods were stolen from a permitted construction site.

(b) As used in this section, a 'permitted construction site' is a site where a permit, license, or other authorization has been issued by the State or a local governmental entity for the placement of new construction or improvements to real property."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 12th day of July, 2005.

Became law upon approval of the Governor at 1:56 p.m. on the 20th day of July, 2005.

S.B. 577 **Session Law 2005-209**

AN ACT TO CLARIFY THAT AN UNAUTHORIZED INSURER SHALL NOT OPERATE IN THIS STATE IN ITS OWN NAME OR UNDER A "DOING BUSINESS AS" DESIGNATION AS A THIRD PARTY ADMINISTRATOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ **58-56-52. Prohibitions.**

(a) No insurance company shall act as a third party administrator with respect to residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities unless that insurance company is authorized to do the business of insurance in this State and otherwise complies with the applicable laws of this State.

(b) No insurance company shall enter into an agreement with an unauthorized insurance company to provide administrative services for residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities that would subject the unauthorized insurer to this section."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 13th day of July, 2005.

Became law upon approval of the Governor at 1:56 p.m. on the 20th day of July, 2005.

H.B. 733 **Session Law 2005-210**

AN ACT TO PROVIDE FOR THE LICENSING OF STATISTICAL ORGANIZATIONS BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-190 reads as rewritten:

"§ **58-2-190. Commissioner may require special reports.**

The Commissioner may also address to any authorized insurer, ~~rating organization, advisory organization,~~ statistical organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to ~~such~~ the inquiry promptly and truthfully, and ~~such~~ the reply shall be verified, if required by the Commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate."

SECTION 2. G.S. 58-40-1 reads as rewritten:

"§ **58-40-1. Purposes.**

The purposes of this Article are

(1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(2) To authorize the existence and operation of qualified ~~rating organizations and advisory~~ statistical organizations and require that specified ~~rating~~ services of ~~such rating~~ the organizations be generally available to all admitted insurers;

(3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;

(4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and

(5) To encourage the most efficient and economic marketing practices."

SECTION 3. G.S. 58-40-5 reads as rewritten:

"§ **58-40-5. Definitions.**

As used in this Article:

~~(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.~~

(2) Repealed by Session Laws 1991, c. 720, s. 6.

(3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.

(4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a ~~rating, advisory or other~~ statistical organization.

~~(5) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70 and 58-40-75, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.~~

(5a) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, or rating plans or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a

rate-making capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70, and 58-40-75 shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

(5b) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a ~~rating~~ statistical organization of which it is not a member, or (ii) with advisory services by ~~an advisory~~ a statistical organization of which it is not a member.

(7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(8), (9) Repealed by Session Laws 1987, c. 864, s. 66."

SECTION 4. G.S. 58-40-30(a) reads as rewritten:

"(a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted insurer and every licensed ~~rating~~ statistical organization, which has been designated by any insurer for the filing of rates under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective."

SECTION 5. G.S. 58-40-40 reads as rewritten:

"§ **58-40-40. Delegation of rate making and rate filing obligation.**

(a) An insurer may itself establish rates based on the factors in G.S. 58-40-25 or it may use rates prepared by a ~~rating~~ statistical organization, with average expense factors determined by the ~~rating~~ statistical organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-40-30 by giving notice to the Commissioner that it uses rates prepared by a designated ~~rating~~ statistical organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the ~~rating~~ statistical organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer."

SECTION 6. G.S. 58-40-45(c) reads as rewritten:

"(c) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical ~~agency~~ organization designated by the Commissioner, ~~any rating or advisory~~

~~organization,~~ or any insurer, which information will affect the rates, rating plans, loss costs, classifications, or policy forms subject to this Article."

SECTION 7. G.S. 58-40-50 reads as rewritten:

"§ **58-40-50. ~~Rating~~ Statistical organizations.**

(a) No ~~rating~~ statistical organization shall ~~provide any service relating to rates subject to this Article~~ conduct its operations in this State, and no insurer shall utilize the service of such organization for ~~such~~ any purpose enumerated in G.S. 58-40-5 unless the organization has obtained a license from the Commissioner.

(b) No ~~rating~~ statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A ~~rating~~ statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its ~~business;~~business, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner ~~finds~~ determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

~~(f) Every rating organization providing services in this State on September 1, 1977, may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after September 1, 1977.~~

(g) Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data.

(h) No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities."

SECTION 8. G.S. 58-40-55 is repealed.

SECTION 9. G.S. 58-40-65 reads as rewritten:

"§ **58-40-65. Insurers authorized to act in concert.**

Subject to and in compliance with the provisions of Articles 1 through 64 of this Chapter authorizing insurers to be members or subscribers of ~~rating or advisory organizations~~ statistical organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, the creation, administration, or termination of a market assistance program, or carrying on of research."

SECTION 10. G.S. 58-40-75 reads as rewritten:

"§ **58-40-75. Agreements to adhere.**

No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a market assistance program or of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section does not apply to mandatory or voluntary risk sharing plans established under Article 42 of this Chapter or apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-40-95. Provided, however, that members and subscribers of ~~rating or advisory~~ statistical organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a ~~rating or advisory~~ statistical organization, consistently or intermittently use the rates or rating systems made or adopted by a ~~rating~~ statistical organization, or the underwriting rules or policy or bond forms prepared by a ~~rating or advisory~~ statistical organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement."

SECTION 11. G.S. 58-40-80 reads as rewritten:

"§ **58-40-80. Exchange of information or experience data; consultation with ~~rating~~ statistical organizations and insurers.**

~~Rating~~ Statistical organizations licensed pursuant to G.S. 58-40-50 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with ~~rating~~ statistical organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems."

SECTION 12. G.S. 58-40-85 reads as rewritten:

"§ **58-40-85. Recording and reporting of experience.**

The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. ~~No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system.~~ The Commissioner may designate one or more ~~rating~~ statistical organizations to assist him in gathering and making compilations of such experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of these designated statistical organizations."

SECTION 13. G.S. 58-40-90 reads as rewritten:

"§ **58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.**

The Commissioner shall, at least once every three years, make or cause to be made an examination of each ~~rating~~ statistical organization licensed pursuant to ~~G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55.~~ G.S. 58-40-50. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state."

SECTION 14. G.S. 58-40-100 reads as rewritten:

"§ **58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.**

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or ~~rating~~ statistical organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or ~~rating~~ statistical organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-2-50 or 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

SECTION 15. G.S. 58-40-110 reads as rewritten:

"§ **58-40-110. Suspension of license.**

(a) Repealed by Session Laws 1985, c. 666, s. 36.

(b) ~~The~~ Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any ~~rating~~ statistical organization or insurer ~~that~~ or impose a monetary penalty against any statistical organization or insurer where (i) the Commissioner has reason to believe that any statistical organization or insurer has violated any provision of this Chapter, or (ii) the statistical agent fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any ~~rating~~ statistical organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until ~~such~~ the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and ~~such~~ the suspension shall remain in effect for the period fixed by

him unless he modifies or rescinds ~~such~~ the suspension, or until the order upon which ~~such~~ the suspension is based is modified, rescinded, or reversed.

(c) No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to ~~such~~ the person or organization, and specifying the alleged violation."

SECTION 16. G.S. 58-40-130 reads as rewritten:

"§ **58-40-130. Financial disclosure; rate modifications; reporting requirements.**

(a) The Commissioner may require each insurer subject to this Article to report, on a form prescribed by the Commissioner, its loss and expense experience, investment income, administrative expenses, and other data that he may require, for kinds of insurance or classes of risks that he designates. These reports are in addition to financial or other statements required by Articles 1 through 64 of this Chapter.

(b) The Commissioner may designate one or more ~~rating organizations or advisory~~ statistical organizations to gather and compile the experience and data referred to in subsection (a) of this section for their member companies.

(c) Whereas the provisions enacted by the General Assembly in 1986 regarding modifications in North Carolina civil law may have a prospective effect upon the loss experience of insurers subject to this Article, the Commissioner is authorized to review each company's rates by type of insurance that are in effect on and after January 1, 1987, and, when and where appropriate, require modification of ~~such~~ those rates.

(d) Each insurer subject to this Article shall record the experience and data referred to in subsection (a) of this ~~section arising from causes of action arising against its insureds on and after January 1, 1987.~~section. Such experience and data shall be reported to the Commissioner ~~by March 31, 1988, which report shall be~~ on a form prescribed by the Commissioner ~~reflecting such experience and data for the one-year period beginning on January 1, 1987. Subsequently, such experience and data shall be reported to the Commissioner~~ by March 31 of each year for each one-year period ending on December 31 of the previous year.

(e) On or before July 1, 1988, and annually thereafter, the Commissioner shall report to the General Assembly the effects, if any, of changes in North Carolina civil law statutes on the experience of insurers subject to this section."

SECTION 17. G.S. 143B-472.96(b) reads as rewritten:

"(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of ~~rating or advisory~~ statistical organizations licensed under ~~G.S. 58-40-50 or G.S. 58-40-55.~~ G.S. 58-40-50. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority under this section must be approved by the Commissioner of Insurance before they may be used."

SECTION 18. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-4. Statistical organizations; licensing; recording and reporting; examination; suspension of license; financial disclosure.**

(a) For purposes of this Article:

(1) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:

a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, rating plans, or rating systems.

b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of that person's profession shall be deemed to be a statistical organization.

c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in this Article shall be deemed to be a statistical organization.

d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

"Statistical organization" shall not mean the North Carolina Rate Bureau, the North Carolina Motor Vehicle Reinsurance Facility, the North Carolina Insurance Underwriting Association, or the North Carolina Joint Underwriting Association.

(2) "Statistical plan" means the document used by a statistical organization to set forth which data elements are to be reported to the statistical organization and to describe the format in which the data must be reported.

(b) No statistical organization shall conduct its operations in this State, and no insurer shall utilize the service of that organization for any purpose enumerated in this Article unless the organization has obtained a license from the Commissioner. No statistical organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services. A statistical organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(5) Any other relevant information and documents that the Commissioner may require.

If the Commissioner determines that the applicant and the natural persons through whom it acts are qualified to provide the services proposed and that all requirements of law are met, the Commissioner shall issue a license specifying the authorized activity of the applicant. The Commissioner shall not issue a license if the proposed activity would

tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked. Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner. Every statistical organization shall file a statistical plan with the Commissioner for approval for each line of insurance for which the organization requests to be licensed. The Commissioner may, in the Commissioner's discretion, modify the plan to collect additional types of data. No statistical organization shall engage in any unfair or unreasonable practice with respect to its activities.

(c) Statistical organizations licensed pursuant to subsection (b) of this section and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with statistical organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems.

(d) The Commissioner shall adopt or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of those insurers may be made available to the Commissioner. The Commissioner may designate one or more statistical organizations to assist him or her in gathering and making compilations of the experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of the designated statistical organizations.

(e) The Commissioner shall, at least once every three years, make or cause to be made an examination of each statistical organization licensed pursuant to subsection (b) of this section. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents, and employees of any statistical organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state.

(f) Subject to the requirements of this Article and of G.S. 58-2-70, the Commissioner may suspend or revoke the license of any statistical organization or impose a monetary penalty against any statistical organization where (i) the Commissioner has reason to believe that any statistical organization has violated any provision of this Chapter, or (ii) the statistical organization fails to comply with an order of the Commissioner within the time limited by the order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any statistical organization for failure to comply with an order until the time prescribed for an appeal from the order has expired or, if an appeal has been taken, until the order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and the suspension shall remain in effect for the period fixed by the Commissioner unless the Commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed. No license shall be suspended or revoked, and no monetary penalty shall be imposed except upon a written order of the Commissioner stating the Commissioner's findings, made after a hearing held upon not less than 10 days' written notice to the person or organization, and specifying the alleged violation."

SECTION 19. G.S. 58-37(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory ~~rating~~ statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

SECTION 20. G.S. 58-41-50(b) reads as rewritten:

"(b) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all rates or prospective loss cost multipliers by licensed fire and casualty companies or their designated ~~rating~~ statistical organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer."

SECTION 21. G.S. 58-42-10(a) reads as rewritten:

"(a) Each plan shall require participation:

(1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;

(2) By all agents licensed to represent those insurers for that kind of insurance; and

(3) By every ~~rating~~ statistical organization that makes rates for that kind of insurance."

SECTION 22. G.S. 58-42-25 reads as rewritten:

"§ **58-42-25. Basis for participation.**

Each plan shall specify the basis for participation by insurers, agents, ~~rating~~ statistical organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan."

SECTION 23. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 1:57 p.m. on the 20th day of July, 2005.

S.B. 778 **Session Law 2005-211**

AN ACT AMENDING CERTAIN LAWS REGULATING PERSONS ENGAGED IN PROVIDING PRIVATE PROTECTIVE SERVICES TO ALLOW FOR PROBATIONARY EMPLOYEES AND THE REGISTRATION OF REGULAR EMPLOYEES, AND TO PROVIDE THAT A PERSON LICENSED BY THE PRIVATE PROTECTIVE SERVICES BOARD AS AN ARMED SECURITY GUARD WHO ALSO HAS AN ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT IS DEEMED TO HAVE SATISFIED THE APPROVED FIREARMS SAFETY AND TRAINING COURSE REQUIREMENT FOR A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-11 reads as rewritten:

"§ **74C-11. ~~Registration of permanent and temporary~~Probationary employees and registration of regular employees; unarmed security guard required to have registration card.**

(a) All licensees may employ unarmed security guards as probationary employees for 20 calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register ~~their employees~~the employee who will be engaged in providing private protective services covered by this Chapter with the Board within ~~20~~ 30 days after the probationary employment ~~begins,~~period ends, unless the Director, in ~~his~~ the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an ~~employee,~~employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.

(b) A security guard and patrol company may not employ an unarmed security guard in a regular position unless the guard has a registration card issued under subsection (d) of this section. A person engaged in a private protective services

profession may not employ an armed security guard unless the guard has a firearm registration permit issued under G.S. 74C-13.

(c) The Director shall be notified in writing of the termination of any regular employee registered under subsection (a) of this section within 10 days after ~~said~~ the termination.

(d) An unarmed security guard shall make application to the Director for an unarmed registration card which the Director shall issue to said applicant after receipt of the information required to be submitted by his employer pursuant to subsection (a), and after meeting any additional requirements which the Board, in its discretion, deems to be necessary. The unarmed security guard registration card shall be in the form of a pocket card designed by the Board, shall be issued in the name of the applicant, and may have the applicant's photograph affixed thereto. The unarmed security guard registration card shall expire one year after its date of issuance and shall be renewed every year. If an unarmed registered security guard is terminated by a licensee and changes employment to another security guard and patrol company, the security guard's registration card shall remain valid, provided the security guard pays the unarmed guard registration transfer fee to the Board and a new unarmed security guard registration card is issued. An unarmed security guard whose transfer registration application and transfer fee have been sent to the Board may work with a copy of the transfer application until the registration card is issued.

(e) Notwithstanding the provisions of this section, a licensee may employ a person properly registered or licensed as an unarmed security guard in another state for a period not to exceed 10 days in any given month; provided the licensee, prior to employing the unarmed security guard, submits to the Director the name, address, and social security number of the unarmed guard and the name of the state of current registration or licensing, and the Director approves the employment of the unarmed guard in this State.

~~(f) Notwithstanding the provisions of this section, a licensee may employ a person as an unarmed security guard for a period not to exceed 30 days in any given calendar year without registering that employee in accordance with this section; provided that the licensee submits to the Director a quarterly report, within 30 days after the end of the quarter in which the temporary employee worked, which provides the Director with the name, address, social security number, and dates of employment of such employee.~~"

SECTION 2. G.S. 14-415.12A reads as rewritten:

"§ **14-415.12A. Firearms safety and training course exemption for qualified sworn law enforcement ~~officers.~~officers and certain other persons.**

(a) A person who is a qualified sworn law enforcement officer or a qualified former sworn law enforcement officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course.

(b) A person who is licensed or registered by the North Carolina Private Protective Services Board under Article 1 of Chapter 74C of the General Statutes as an armed security guard, who also has a firearm registration permit issued by the Board in compliance with G.S. 74C-13, is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course."

SECTION 3. This act is effective when it becomes law, and Section 2 of this act applies to permit applications submitted on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 1:58 p.m. on the 20th day of July, 2005.

S.B. 667 **Session Law 2005-212**

AN ACT TO VALIDATE CERTAIN SUBORDINATION AGREEMENTS AND TO CLARIFY THE LAW ON THE PRIORITY OF INSTRUMENTS REGISTERED IN THE OFFICE OF THE REGISTER OF DEEDS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-6.6 reads as rewritten:

"§ **39-6.6. Subordination agreements.**

(a) A ~~written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority~~ subordination agreement shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms. ~~For purposes of this section, an "interest in real property" shall include all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.~~

(b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.

(c) For purposes of G.S. 1-47, a ~~commitment or~~ subordination agreement ~~described in subsection (a) of this section~~ is deemed a conveyance of an interest in real property.

(d) ~~The~~ This section is not exclusive. No subordination agreement that is otherwise valid shall be invalidated by ~~failure to comply with the provisions of~~ this section.

(e) This section applies to a subordination agreement regardless of when the agreement was signed by the party or parties thereto, except that this section does not apply to an agreement that (i) is the subject of litigation pending on the effective date of this subsection, and (ii) was filed or recorded before October 1, 2003.

(f) In this section:

(1) 'Interest in real property' includes all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.

(2) 'Subordination agreement' means a written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority."

SECTION 2. G.S. 47-18(a) reads as rewritten:

"(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county. Unless otherwise stated either on the ~~recorded~~ registered instrument or on a separate ~~recorded~~ registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the ~~public record shall be presumed to~~ office of the register of deeds shall have priority based on the order of ~~recordation~~ registration as determined by the time of ~~recordation. If~~ registration, and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the order of recordation~~ the instruments shall be presumed ~~as follows, in order of priority:~~ to have priority as determined by:

(1) The earliest document number set forth on the ~~recorded~~ registered instrument.

(2) The sequential book and page number set forth on the ~~document~~ registered instrument if no document number is set forth on the ~~recorded~~ registered instrument.

The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

SECTION 3. G.S. 47-20(a) reads as rewritten:

"(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section. Unless otherwise stated either on the ~~recorded~~ registered instrument or on a separate ~~recorded~~ registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the ~~public record shall be presumed to~~ office of the register of deeds shall have priority based on the order of ~~recordation~~ registration as determined by the time of ~~recordation. If~~ registration, and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the order of recordation~~ the instruments shall be presumed ~~as follows, in order of priority:~~ to have priority as determined by:

(1) The earliest document number set forth on the ~~recorded~~ registered instrument.

(2) The sequential book and page number set forth on the ~~document~~ registered instrument if no document number is set forth on the ~~recorded~~ registered instrument.

The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

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

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 1:59 p.m. on the 20th day of July, 2005.

S.B. 879 **Session Law 2005-213**

AN ACT TO ALLOW FOR A BIDDING PREFERENCE ON STATE CONTRACTS FOR RESIDENT BIDDERS IN CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE MAINTENANCE OF A RESIDENT BIDDER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2001-240 reads as rewritten:

"**SECTION 3.** This act becomes effective January 1, ~~2002, and expires December 31, 2007.~~2002."

SECTION 2. G.S. 143-49 is amended by adding a new subdivision to read:

"(9) To establish and maintain a list of resident bidders, as defined in G.S. 143-59(c), who have expressed an interest in bidding on contracts for specific goods or services enumerated by the bidder."

SECTION 3. G.S. 143-59 is amended by adding a subsection to read:

"(f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only."

SECTION 4. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 2:00 p.m. on the 20th day of July, 2005.

S.B. 666 **Session Law 2005-214**

AN ACT TO ALLOW ATTORNEYS' FEES TO BE AWARDED TO THE PREVAILING PARTY IN AN ACTION TO ENFORCE PROVISIONS OF THE ARTICLES OF INCORPORATION, DECLARATION, BYLAWS, OR RULES OF A PLANNED COMMUNITY CREATED PRIOR TO JANUARY 1, 1999, IF RECOVERY OF ATTORNEYS' FEES IS ALLOWED IN THE DECLARATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the ~~contrary.~~ contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions)

also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 2:01 p.m. on the 20th day of July, 2005.

H.B. 660 **Session Law 2005-215**

AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE FINANCIAL LAWS UNDER CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-150 reads as rewritten:

"§ **58-2-150. Oath required for compliance with law.**

Before issuing license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with ~~him~~ the Commissioner the affidavit of its president or other chief officer that it accepts the terms and obligations of Articles 1 through ~~64~~ 67 of this Chapter as a part of the consideration of the license."

SECTION 2. G.S. 58-3-100(a)(2) reads as rewritten:

"(2) ~~The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.~~ After considering the standards under G.S. 58-30-60(b), the Commissioner determines that the continued operation of the insurer is hazardous to its policyholders, to its creditors, or to the general public."

SECTION 3. G.S. 58-5-50 reads as rewritten:

"§ **58-5-50. Deposits of foreign life insurance companies.**

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of four hundred thousand dollars ($400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional two hundred thousand dollars ($200,000) where such companies cannot show three years of net operational gains prior to admission. ~~Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section.~~"

SECTION 4. G.S. 58-5-90 reads as rewritten:

"§ **58-5-90. Deposits held in trust by Commissioner or Treasurer.**

(a) Deposits by Domestic Company. – The Commissioner or the Treasurer, in ~~his~~ that officer's official capacity, shall take and hold in trust deposits made by any domestic insurance company for the benefit of all of the insurer's policyholders and for the purpose of complying with the laws of any other state to enable the company to do business in that state. The company making the deposits is entitled to the income thereof, and may, from time to time, with the consent of the Commissioner or Treasurer, and when not forbidden by the law under which the deposit was made, change in whole

or in part the securities which compose the deposit for other solvent securities of equal par value. Upon request of any domestic insurance company ~~such officer~~ the Commissioner or the Treasurer may return to the company the whole or any portion of the securities of the company held by ~~him~~ the officer on deposit, when ~~he~~ the officer is satisfied that ~~they~~ the deposits are subject to no liability and are ~~not~~ no longer required to be ~~longer~~ held by any provision of law or purpose of the original deposit.

(b) Deposits by Foreign or Alien Company. – The Commissioner or Treasurer, in that respective officer's official capacity, shall take and hold in trust deposits made by any foreign or alien insurance company for the benefit of the holders of all insurance contracts of the company who are citizens or residents of this State or who hold policies issued upon property in this State in accordance with G.S. 58-5-70. The Commissioner or Treasurer may return to the trustees or other representatives authorized for that purpose any deposit made by a foreign or alien insurance company, when it appears that the company has ceased to do business in the State and is under no obligation to policyholders or other persons in the State for whose benefit the deposit was made.

(c) Action to Enforce or Terminate the Trust. – An insurance company which has made a deposit in this State pursuant to Articles 1 through 64 of this Chapter, or its trustees or resident managers in the United States, or the Commissioner, or any creditor of the company, may at any time bring an action in the Superior Court of Wake County against the State and other parties properly joined therein, to enforce, administer, or terminate the trust created by the deposit. The process in this action shall be served on the officer of the State having the deposit, who shall appear and answer in behalf of the State and perform such orders and judgments as the court may make in such action."

SECTION 5. G.S. 58-6-15 reads as rewritten:

"§ **58-6-15. Annual license continuation fee definition; requirements.**

For purposes of this Chapter only, "annual license continuation ~~fee means"~~ fee" means the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the license is in effect after the company's year of initial licensing. The annual license continuation fee must be submitted annually on or before the first day of March ~~on a form to be supplied by the Commissioner each year~~ for as long as the license is to remain in effect. If the Commissioner is satisfied that the company has met all requirements of law and appears to be financially solvent, the Commissioner shall not revoke or suspend the license of the company, and the company shall be authorized to do business in this State, subject to all other applicable provisions of the insurance laws of this State. Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."

SECTION 6. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-7-46. Notification to Commissioner for president or chief executive officer changes.**

All domestic insurers organized under the laws of this Chapter shall provide the Commissioner written notice of any change that occurs in the position of president or chief executive officer of the insurer no later than 30 days after the change. Notice shall include the name of the insurer, the name of the person previously holding the position of president or chief executive officer, the name of the person currently holding the position, and the date the position change took place."

SECTION 7. G.S. 58-7-170 reads as rewritten:

"§ **58-7-170. Diversification.**

(a) Every insurer must maintain an amount equal to its entire policyholder-related liabilities and the minimum capital and surplus required to be maintained by the insurer under this Chapter invested in coin or currency of the United States and in investments authorized under this Chapter, other than the investments authorized under G.S. 58-7-183 or G.S. 58-7-187, except G.S. 58-7-187(b)(1).

(b) Investments eligible under subsection (a), except investments acquired under G.S. 58-7-183, are subject to the following limitations, other limitations of this section, and any other limitations that are expressly provided for in any provision under which the investment is authorized:

(1) The cost of investments made by insurers in stock authorized by G.S. 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's admitted assets, provided that no more than twenty percent (20%) of the insurer's admitted assets shall be invested in common stock; and the cost of an investment in stock of any one corporation shall not exceed three percent (3%) of the insurer's admitted assets. Notwithstanding any other provision in this Chapter, the financial statement carrying value of all stock investments shall be used for the purpose of determining the asset value against which the percentage limitations are to be applied. Investments in the voting securities of a depository institution, or any company that controls a depository institution, shall not exceed five percent (5%) of the insurer's admitted assets. As used in this subdivision, "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813; and includes any foreign bank that maintains a branch, an agency, or a commercial lending company in the United States.

(2) The cost of Canadian investments authorized by G.S. 58-7-173 shall not exceed forty percent (40%) of the insurer's admitted assets in the aggregate, provided that no more than twenty-five percent (25%) of the insurer's admitted assets shall be invested in Canadian investments authorized by G.S. 58-7-173(11).

(c) The cost of investments made by an insurer in mortgage loans authorized by G.S. 58-7-179 with any one person, or in ~~mortgage pass-through securities and derivatives of mortgage pass-through~~ mortgage-backed securities authorized by G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral ~~package,~~ pool, shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not invest in additional mortgage loans or ~~mortgage pass-through securities and derivatives of mortgage pass-through~~ mortgage-backed securities without the Commissioner's consent if the admitted value of all those investments held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%) limitation, the admitted value of all ~~mortgage pass-through securities and derivatives of mortgage pass-through~~ mortgage-backed securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of the admitted assets of the insurer. The admitted value of other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the insurer. ~~Mortgage pass-through~~ Mortgage-backed securities authorized by G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral ~~package~~ pool limitation and the sixty percent (60%) aggregate limitation. No later than January 31, 1999, an insurer that has mortgage investments that exceed the limitations specified in this subsection shall submit to the Commissioner a plan to bring the amount of

mortgage investments into compliance with the specified limitations by January 1, 2004.

(d) Without the Commissioner's prior written approval, the cost of investments permitted under G.S. 58-7-173 and G.S. 58-7-178, and that are classified as medium to lower quality obligations, other than obligations of subsidiaries or affiliated corporations as that term is defined in G.S. 58-19-5, shall be limited to:

(1) No more than twenty percent (20%) of an insurer's admitted assets;

(2) No more than ten percent (10%) of an insurer's admitted assets in obligations ~~that have been given a rating of~~ designated a 4, 5, or 6 ~~by the Securities Valuation Office of the NAIC;~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office;

(3) No more than three percent (3%) of an insurer's admitted assets in obligations ~~that have been given a rating of~~ designated a 5 or 6 ~~by the Securities Valuation Office of the NAIC;~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office; and

(4) No more than one percent (1%) of an insurer's admitted assets in obligations ~~that have been given a rating of~~ designated a 6 ~~by the Securities Valuation Office of the NAIC.~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office.

(5) (6). Repealed by Session Laws 1993, c. 452, s. 11.

(e) As used in subsections (d), (f), (g), and (h) of this section, "medium to lower quality obligations" means obligations ~~that have been given a rating of~~ designated a 3, 4, 5, or 6 ~~by the Securities Valuation Office of the NAIC.~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office.

(f) Each insurer shall possess and maintain adequate documentation to establish that its investments in medium to lower quality obligations do not exceed the limitations under subsection ~~(d).~~ (d) of this section.

~~(g) The provisions of subsections (d), (e), and (f) of this section apply to any investment made after December 31, 1991. If an insurer's investments in medium to lower quality obligations equal or exceed the maximum amounts permitted by subsection (d) as of December 31, 1991, the insurer shall not acquire any additional medium to lower quality obligations without the Commissioner's prior written approval. An insurer that is not in compliance with subsection (d) of this section as of December 31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner, only those medium to lower quality obligations it owns on that date, if the obligations were obtained in compliance with the law in effect when the investments were made. If the insurer sells, transfers, or otherwise disposes of the securities before maturity, the insurer may not acquire any medium to lower quality obligations as substitutions or replacements without the Commissioner's prior approval.~~

~~(h) An insurer that is not in compliance with subsection (d) of this section on December 31, 1991, shall file with its annual statement a separate schedule of the medium to lower quality obligations it owns on December 31, 1991. Until it is in compliance with subsection (d) of this section, the insurer shall file with each succeeding annual and quarterly statement a separate schedule of the medium to lower quality obligations it owns as of the reporting date of the filed statement.~~

(i) Failure to obtain the Commissioner's prior written approval shall result in any investments in excess of those permitted by subsection (d) of this section not being allowed as an asset of the insurer.

(j) The Commissioner may limit the extent of an insurer's deposits with any financial institution if the Commissioner determines that the financial solvency of the insurer is threatened by a deposit in excess of insured limits.

(k) The provisions of this section supersede any inconsistent provision of section 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to the extent permitted by that Act."

SECTION 8. G.S. 58-7-173(11) reads as rewritten:

"(11) Bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent institution organized under the laws of the United States, of any state, Canada or any Canadian province; provided ~~such~~ the instruments are ~~rated and valued by the Securities Valuation Office of the NAIC.~~ designated and valued in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office. The cost of investments made under this subdivision in any one issuer shall not exceed three percent (3%) of an insurer's admitted assets."

SECTION 9. G.S. 58-7-173(17) reads as rewritten:

"(17) ~~Mortgage pass-through securities and derivatives thereof, that have been rated as investment grade by the Securities Valuation Office of the NAIC~~ Mortgage-backed securities that are designated a 1 or 2 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class, and investment quality as those eligible for investment under G.S. 58-7-179."

SECTION 10. G.S. 58-7-178(b) reads as rewritten:

"(b) An insurer, whether or not it is authorized to do business or has outstanding insurance contracts on lives or risks in any foreign country, may invest in bonds, notes, or stocks of any foreign country or alien corporation that are substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment under this Chapter. The aggregate cost of investments under this subsection shall not exceed ten percent (10%) of the insurer's admitted assets, provided that the cost of investments in any one foreign country under this subsection shall not exceed three percent (3%) of the insurer's admitted assets."

SECTION 11. G.S. 58-10-120(1) reads as rewritten:

"(1) "Mortgage guaranty insurers report of policyholders position" means the ~~annual~~ supplementary report required by the Commissioner."

SECTION 12. Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ **58-10-140. Report of policyholder's position.**

Each mortgage guaranty insurance company doing business in this State must file on a form prescribed by the Commissioner a Mortgage Guaranty Insurers Report of Policyholders Position. The supplemental reports shall be filed with the annual and quarterly statements pursuant to G.S. 58-2-165."

SECTION 13. G.S. 58-16-6 reads as rewritten:

"§ **58-16-6. Conditions of continued licensure.**

In order for a foreign insurance company to continue to be licensed, it shall report any changes in the documents filed under G.S. 58-16-5(1) or ~~G.S. 58-16-5(5),~~ G.S. 58-16-5(5); maintain the amounts of capital and surplus specified in ~~G.S. 58-16-5(2),~~ G.S. 58-16-5(2); and remain in ~~substantial~~ compliance with ~~the statutes listed in~~ G.S. 58-16-5(6), (7), and ~~(8).~~ (8) and with G.S. 58-7-46."

SECTION 14. G.S. 58-19-30(b)(1) reads as rewritten:

"(1) Sales, purchases, exchanges, loans or extensions of credit, ~~guarantees,~~ or investments, provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31."

SECTION 15. G.S. 58-47-140 reads as rewritten:

"§ **58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, ~~58-3-125,~~ 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this Chapter apply to groups."

SECTION 16. G.S. 58-56-2(5)l. reads as rewritten:

"l. ~~A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.~~A managing general agent as defined in G.S. 58-34-2(a)(3), whose activities are limited exclusively to the scope of the activities set forth in the managing general agency contract filed by an insurer with the Commissioner in accordance with G.S. 58-34-2(i)."

SECTION 17. G.S. 58-65-2 reads as rewritten:

"§ **58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.

G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children."

SECTION 18. G.S. 58-67-25 reads as rewritten:

"§ **58-67-25. Deposits.**

(a) The Commissioner shall require a minimum deposit of five hundred thousand dollars ($500,000) for all full service medical health maintenance organizations or such higher amount as he deems necessary for the protection of enrollees. ~~The minimum deposit for a full service medical health maintenance organization authorized to operate on July 17, 1987, and having a deposit of less than five hundred thousand dollars ($500,000) shall be as follows:~~

~~(1) $250,000 by December 31, 1987~~

~~(2) $500,000 by December 31, 1988.~~

~~Any health maintenance organization not authorized to do business on July 17, 1987, must comply with the minimum initial deposit of five hundred thousand dollars ($500,000).~~

(b) The Commissioner shall require a minimum deposit of twenty-five thousand dollars ($25,000) for all single service health maintenance organizations or such higher amount as he deems necessary for the protection of enrollees.

(c) All deposits required by this section shall be administered in accordance with the provisions of ~~G.S. 58-5-1.~~ Article 5 of this Chapter."

SECTION 19. G.S. 58-67-115(b)(2) reads as rewritten:

"(2) Whenever the reimbursements described in this subsection exceed ten percent (10%) of the HMO's total costs for health care services over the immediately preceding six months, the HMO shall file a written report with the Commissioner containing the information necessary to determine compliance with sub-subdivision (b)(1)a. of this section ~~no later than 30 business days from the first day of the month.~~ with its financial statements filed pursuant to G.S. 58-2-165. Upon an adequate showing by the HMO that the requirements of this section should be waived or reduced, the Commissioner may waive or reduce these requirements to such an amount as he deems sufficient to protect enrollees of the HMO consistent with the intent and purpose of this Article."

SECTION 20. G.S. 58-67-171 reads as rewritten:

"§ **58-67-171. Other laws applicable to HMOs.**

The following provisions of this Chapter are applicable to HMOs that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.

G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
G.S. 58-7-73.	Dissolution of insurers.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-35.	Insurers and others to afford coverage to mentally retarded and physically handicapped children.
G.S. 58-51-45.	Policies to be issued to any person possessing the sickle-cell trait or hemoglobin C trait."

SECTION 21. G.S. 58-2-215(b)(1) reads as rewritten:

"(1) For the purpose of retaining outside actuarial and economic consultants, legal counsel, and court reporting services in the review and analysis of rate ~~filings,~~ filings and any other insurance regulatory matters, in conducting all hearings, and through any final adjudication."

SECTION 22. G.S. 58-12-40 reads as rewritten:

"§ **58-12-40. Supplemental provisions; rules; exemptions.**

(a) The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

(b) Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The Commissioner shall not use any of these reports or plans for rate making nor consider or introduce them as evidence in any rate proceeding. The Commissioner shall not use these reports or plans to calculate or derive any elements of an appropriate premium level or rate of return for any kind of insurance that an insurer or any affiliate is authorized to write.

(c) The Commissioner may exempt from the application of this Article any domestic property or casualty insurer ~~that does all of the following:~~ that:

(1) Writes direct business only in this State.

(2) Writes direct annual premiums of ~~one thousand dollars ($1,000)~~ two million dollars ($2,000,000) or less.

(3) Assumes no reinsurance in excess of five percent (5%) of direct written premiums.

(d) The Commissioner may, in the Commissioner's discretion, exempt from the application of this Article:

(1) Any domestic town or county mutual insurance company organized under G.S. 58-7-75(5)d.

(2) Any domestic life or health insurer that:

a. Has no direct or assumed annual premiums; and

b. Has no direct or assumed policyholder obligations.

(3) Any domestic health maintenance organization that:

a. Writes only direct business in this State;

b. Assumes no reinsurance in excess of five percent (5%) of direct written premiums; and

c. Writes direct annual premiums for a comprehensive medical business of two million dollars ($2,000,000) or less, or is a single service health maintenance organization that covers less than 2,000 lives."

SECTION 23. G.S. 58-67-10 reads as rewritten:

"§ **58-67-10. Establishment of health maintenance organizations.**

(a) Notwithstanding any law of this State to the contrary, any person may apply to the Commissioner for a ~~certificate of authority~~ license to establish and operate a health maintenance organization in compliance with this Article. No person shall establish or operate a health maintenance organization in this State, nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a ~~certificate of authority~~ license under this Article. A foreign corporation may qualify under this Article, subject to its full compliance with Article 16 of this Chapter.

(b) (1) It is specifically the intention of this section to permit such persons as were providing health services on a prepaid basis on July 1, 1977, or receiving federal funds under Section 254(c) of Title 42, U.S. Code, as a community health center, to continue to operate in the manner which they have heretofore operated.

(2) Notwithstanding anything contained in this Article to the contrary, any person can provide health services on a fee for service basis to individuals who are not enrollees of the organization, and to enrollees for services not covered by the contract, provided that the volume of services in this manner shall not be such as to affect the ability of the health maintenance organization to provide on an adequate and timely basis those services to its enrolled members which it has contracted to furnish under the enrollment contract.

(3) This Article shall not apply to any employee benefit plan to the extent that the Federal Employee Retirement Income Security Act of 1974 preempts State regulation thereof.

(3a) This Article does not apply to any prepaid health service or capitation arrangement implemented or administered by the Department of Health and Human Services or its representatives, pursuant to 42 U.S.C. § 1396n or Chapter 108A of the General Statutes, a provider sponsored organization or other organization certified, qualified, or otherwise approved by the Division of Medical Assistance of the

Department of Health and Human Services pursuant to Article 17 of Chapter 131E of the General Statutes, or to any provider of health care services participating in such a prepaid health service or capitation arrangement. Article; provided, however, that to the extent this Article applies to any such person acting as a subcontractor to a Health Maintenance Organization licensed in this State, that person shall be considered a single service Health Maintenance Organization for the purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-110.

(4) Except as provided in paragraphs (1), (2), (3), and (3a) of this subsection, the persons to whom these paragraphs are applicable shall be required to comply with all provisions contained in this Article.

(c) Each application for a ~~certificate of authority~~ license shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Commissioner, and shall be set forth or be accompanied by the following:

(1) A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments ~~thereto;~~ thereto. Any proposed articles of incorporation for the formation of a domestic health maintenance organization shall be filed with the Commissioner. The Commissioner shall examine the proposed articles. If the Commissioner finds that the proposed articles meet the requirements of the insurance laws of this State and otherwise determines that the articles should be approved, the Commissioner shall place a certificate of approval on the articles and submit the approved articles to the Secretary of State;

(2) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) A list of the names, addresses, and official positions of persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(4) A copy of any contract form made or to be made between any class of providers and the HMO and a copy of any contract form made or to be made between third party administrators, marketing consultants, or persons listed in subdivision (3) of this subsection and the HMO;

(5) A statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) A copy of the form of evidence of coverage to be issued to the enrollees;

(7) A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the Commissioner directs

that additional or more recent financial information is required for the proper administration of this Article;

(9) A financial feasibility plan, which includes detailed enrollment projections, the methodology for determining premium rates to be charged during the first 12 months of operations certified by an actuary or a recognized actuarial consultant, a projection of balance sheets, cash flow statements, showing any capital expenditures, purchase and sale of investments and deposits with the State, and income and expense statements anticipated from the start of operations until the organization has had net income for at least one year; and a statement as to the sources of working capital as well as any other sources of funding;

(10) A power of attorney duly executed by such applicant, if not domiciled in this State, appointing the Commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this State upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this State may be served;

(11) A statement reasonably describing the geographic area or areas to be served;

(12) A description of the procedures to be implemented to meet the protection against insolvency requirements of G.S. 58-67-110;

(13) A description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee complaints and grievances; and

(14) Such other information as the Commissioner may require to make the determinations required in G.S. 58-67-20.

(d) (1) A health maintenance organization shall file a notice describing any significant modification of the operation set out in the information required by subsection (c) of this section. Such notice shall be filed with the Commissioner prior to the modification. If the Commissioner does not disapprove within 90 days after the filing, such modification shall be deemed to be approved. Changes subject to the terms of this section include expansion of service area, changes in provider contract forms and group contract forms where the distribution of risk is significantly changed, and any other changes that the Commissioner describes in properly promulgated rules. Every HMO shall report to the Commissioner for his information material changes in the provider network, the addition or deletion of Medicare risk or Medicaid risk arrangements and the addition or deletion of employer groups that exceed ten percent (10%) of the health maintenance organization's book of business or such other information as the Commissioner may require. Such information shall be filed with the Commissioner within 15 days after implementation of the reported changes. Every HMO shall file with the Commissioner all subsequent changes in the information or forms that are required by this Article to be filed with the Commissioner.

(1a) Any proposed change to the articles of incorporation shall be filed with the Commissioner. The Commissioner shall examine the proposed change to the articles. If the Commissioner determines that the

proposed change should be approved, the Commissioner shall place a certificate of approval on the change and submit the approved change to the Secretary of State.

(2) The Commissioner may promulgate rules and regulations exempting from the filing requirements of subdivision (1) those items he deems unnecessary."

SECTION 24. G.S. 58-15-30 reads as rewritten:

"§ **58-15-30. License, surplus, and deposit requirements.**

(a) No reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of Articles 1 through 64 of this Chapter. ~~Such~~ The license shall ~~expire on the last day of June of each year.~~ continue in full force and effect, subject to timely payment of an annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provision of the insurance laws of this State.

(b) No domestic or foreign reciprocal shall be licensed in this State unless it has a surplus to policyholders of at least eight hundred thousand dollars ($800,000); and no alien reciprocal shall be licensed unless it has a trusteed surplus of at least eight hundred thousand dollars ($800,000).

(c) Each domestic, foreign, or alien reciprocal licensed in this State ~~must maintain a minimum deposit~~ shall deposit and maintain deposits with the Commissioner of at least ~~one hundred thousand dollars ($100,000)~~ four hundred thousand dollars ($400,000) in cash or in value of securities of the kind specified in G.S. 58-5-15, which shall be subject to ~~the same conditions as contained in~~ Article 5 of this Chapter."

SECTION 25. G.S. 58-13-20 reads as rewritten:

"§ **58-13-20. Exception.**

(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those policyholder-related liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

(1) The ceding insurer and the reinsurer are both licensed to transact business in this State;

(2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the policyholder-related liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in trust account for that purpose and under those conditions with a ~~State or national bank domiciled in this State.~~ qualified United States financial institution.

(b) The Commissioner has the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with his authority to make examinations of insurers as conferred by other provisions of this Chapter.

(c) For purposes of subdivision (a)(2) of this section, "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;

(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions who serve as trustees."

SECTION 26. G.S. 58-8-20(e) reads as rewritten:

"(e) Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. ~~Due~~ Written notice of ~~such~~ the proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before ~~such~~ the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. An affirmative vote of at least two-thirds of the policyholders voting in person or by proxy is required to adopt the proposed action."

SECTION 27. Sections 1, 4, 6, 11, 12, 14 through 16, 18, 19, 21, and 23 through 25 of this act become effective October 1, 2005. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 2:02 p.m. on the 20th day of July, 2005.

H.B. 85 **Session Law 2005-216**

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING SPECIAL REGISTRATION PLATES: AIR MEDAL RECIPIENT, ALPHA PHI ALPHA FRATERNITY, ARC OF NORTH CAROLINA, AUTISM SOCIETY OF NORTH CAROLINA, BUDDY PELLETIER SURFING FOUNDATION, COASTAL CONSERVATION ASSOCIATION, COLD WAR VETERAN, CORVETTE CLUB, GUILFORD BATTLEGROUND COMPANY, MARINE CORPS LEAGUE, NATIONAL MULTIPLE SCLEROSIS SOCIETY, NATIONAL WILD TURKEY FEDERATION, NC TROUT UNLIMITED, NORTH CAROLINA AQUARIUMS, NORTH CAROLINA LIBRARIES, NORTH CAROLINA MUSEUM OF NATURAL SCIENCES, NORTH CAROLINA WILDLIFE HABITAT FOUNDATION, OPERATION ENDURING FREEDOM,

OPERATION IRAQI FREEDOM, SCUBA, SHAG DANCING, SHARE THE ROAD, TARHEEL CLASSIC THUNDERBIRD CLUB, AND WATERMELON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited."

SECTION 2. G.S. 20-79.4(a) reads as rewritten:

"(a) General. – Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days. A special registration plate may not be issued for a vehicle registered under the International Registration Plan. A special registration plate may be issued for a commercial vehicle that is not registered under the International Registration Plan. A special registration plate may not be developed using a name or logo for which a trademark has been issued unless the holder of the trademark licenses, without charge, the State to use the name or logo on the special registration plate. ~~A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days.~~"

SECTION 3. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

…

(1b) Air Medal Recipient. – Issuable to the recipient of the Air Medal. The plate shall bear the emblem of the Air Medal and the words 'Air Medal'.

…

(1d) Alpha Phi Alpha Fraternity. – Issuable to a member or supporter of the Alpha Phi Alpha Fraternity in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name.

…

(3b) ARC of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of The ARC of North Carolina, Inc., and the phrase "The ARC".

~~(3b)~~(3c) Audubon North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the National Audubon Society, Inc., logo and a representation of a bird native to North Carolina.

(3d) Autism Society of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Autism Society of North Carolina", the phrase "Providing Support, Promoting Opportunities", and the logo of the Autism Society.

~~(3c)~~(3e) Aviation Maintenance Technician. – Issuable to a person who is a Federal Aviation Authority certified Aviation Maintenance Technician. The plate shall bear the logo of the F.A.A. Airworthiness Program and the initials "A.M.T." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

~~(3e)~~(3f) Be Active NC. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Be Active NC" and a representation of the "Be Active NC" logo.

…

(3l) Buddy Pelletier Surfing Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Buddy Pelletier Surfing Foundation" and bear the logo of the Foundation.

…

(8d) Coastal Conservation Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo and name of the Coastal Conservation Association.

…

(8g) Cold War Veteran. – Issuable to a veteran of the armed services of the United States who served during the Cold War era, September 2, 1945, through December 26, 1991, and who was separated from the armed services under honorable conditions. The plate shall bear the words 'Cold War Veteran' and an insignia representing the Cold War era. The

Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

…

(10e) Corvette Club. – Issuable to the registered owner of a motor vehicle. The plate shall bear the flags logo of the Chevrolet Corvette. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

…

(16c) Guilford Battleground Company. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Revolutionary" used by the Guilford Battleground Company and an image that depicts General Nathaniel Greene.

~~(16c)~~(16d) Harley Owners' Group. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall be designed in consultation with and approved by the Harley-Davidson Motor Company, Inc., and shall bear the words and trademark of the "Harley Owners' Group". ~~The Division shall not develop this plate unless the Harley-Davidson Motor Company, Inc., licenses, without charge, the State to use the words and trademark of the Harley Owners' Group on the plate.~~

…

(24a) Marine Corps League. – Issuable to a member of the Marine Corps League. The plate shall bear the words 'Marine Corps League' or the letters 'MCL' and the emblem of the Marine Corps League. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

…

(27b) Military Wartime Veteran. – Issuable to either a member or veteran of the armed services of the United States who served during a period of war. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. Except for World War II and Korean Conflict plates, the Division may not issue a plate authorized by this subdivision unless it receives at least 300 applications for that plate. A "period of war" is any of the following:

a. World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.
b. World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.
c. The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.
d. The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.
e. Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.
f. Operation Enduring Freedom, meaning the period beginning October 24, 2001, and ending at a date to be determined.

g. Operation Iraqi Freedom, meaning the period beginning March 19, 2003, and ending at a date to be determined.

~~f.~~h. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

…

(27l) National Multiple Sclerosis Society. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall have the logo of the National Multiple Sclerosis Society and the telephone number "1-800-FIGHT MS" on the plate.

…

(28) National Rifle Association. – Issuable to the registered owner of a motor vehicle. The plate shall bear a phrase or insignia representing the National Rifle Association of America. ~~The Division shall not use the name and logo of the National Rifle Association of America on the plate unless the National Rifle Association of America licenses, without charge, the State to use the name and logo on the plate.~~ The Division must receive 300 or more applications for the plate before it may be developed.

…

(28c) National Wild Turkey Federation. – Issuable to the registered owner of a motor vehicle. The plate shall bear the design of a strutting wild turkey and dogwood blossoms and the words 'Working For The Wild Turkey.' The Division must receive 300 or more applications for the plate before it may be developed.

…

~~(28a)~~(28f) Native American. – Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed.

…

~~(28b)~~(28i) NC Agribusiness. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the North Carolina Agribusiness Council, Inc., and the phrase "NC's #1 Industry".

…

~~(28d)~~(28m) NC Coastal Federation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a phrase used by the North Carolina Coastal Federation and an image that depicts the coastal area of the State.

…

(28p) NC Trout Unlimited. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase 'Back the Brookie' and an image that depicts a North Carolina brook trout.

…

~~(28e)~~(28r) North Carolina 4-H Development Fund. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate

may bear a phrase or insignia representing The North Carolina 4-H Development Fund.

…

(28u) North Carolina Libraries. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "North Carolina Libraries" and bear the international logo for libraries. The Division must receive 300 or more applications for the plate before it may be developed.

(28w) North Carolina Wildlife Habitat Foundation. – Issuable to the owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the North Carolina Wildlife Habitat Foundation on the left side and the background of the entire plate shall be beige or tan color. The numbers or other writing on the plate shall be black and the border shall be black. The plate shall be developed by the Division in consultation with and approved by the North Carolina Wildlife Habitat Foundation. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

…

~~(28g)~~(28y) Nurses. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20- 81.12. The plate shall bear the phrase "First in Nursing" and a representation relating to nursing.

…

(34) Professional Sports Fan. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. ~~The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.~~

…

(35d) Red Hat Society. – Issuable to the registered owner of a motor vehicle. The plate shall bear a representation of The Red Hat Society. ~~The Division shall not use the name and logo of The Red Hat Society, Inc., on the plate unless The Red Hat Society, Inc., licenses, without charge, the State to use the name and logo on the plate.~~ The Division must receive 300 or more applications for the plate before it may be developed.

…

(38c) Shag Dancing. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear the phrase "I'd Rather Be Shaggin'" and a picture representing shag dancing.

(38d) Share the Road. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a representation of a bicycle and the phrase 'Share the Road'.

…

(38f) SCUBA. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "SCUBA" and a logo of the Diver Down Flag.

…

(45h) Tarheel Classic Thunderbird Club. – Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of the Tarheel Classic Thunderbird Club and the phrase "Tarheel Classic Thunderbird Club". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

…

(50a) Watermelon. – Issuable to the registered owner of a motor vehicle. The plate shall bear a picture representing a slice of watermelon. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

SECTION 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00
NC Trout Unlimited	$20.00
Nurses	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00

ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
First in Forestry	$30.00
Guilford Battleground Company	$20.00
Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Coastal Conservation Association	$10	$20	0	0

Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Guilford Battleground Company	$10	$10	0	0
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Litter Prevention	$10	$10	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	10	0	$15	0
Personalized	$10	0	$15	$5
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$ 5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0

Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 6. G.S. 20-81.12(b2) reads as rewritten:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

(1) Blue Ridge Parkway Foundation. – The revenue derived from the special plate shall be transferred quarterly to Blue Ridge Parkway Foundation for use in promoting and preserving the Blue Ridge Parkway as a scenic attraction in North Carolina.

~~(1a)~~ (1c) Friends of the Great Smoky Mountains National Park. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.

~~(1b)~~ (1g) Friends of the Appalachian Trail. – The revenue derived from the special plate shall be transferred quarterly to The Appalachian Trail Conference to be used for educational materials, preservation programs, trail maintenance, trailway and viewshed acquisitions, trailway and viewshed easement acquisitions, capital improvements for the portions of the Appalachian Trail and connecting trails that are located in North Carolina, and related administrative and operating expenses.

(1j) The North Carolina Aquariums. – The revenue derived from the special plate shall be transferred quarterly to the North Carolina Aquarium Society, Inc., for its programs in support of the North Carolina Aquariums.

~~(1c)~~ (1m) The North Carolina Arboretum. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.

~~(1d)~~ (1p) The North Carolina Maritime Museum. – The revenue derived from the special plate shall be transferred quarterly to Friends of the Museum, North Carolina Maritime Museum, Inc., to be used for educational programs and conservation programs and for operating expenses of the North Carolina Maritime Museum.

(1t) The North Carolina Museum of Natural Sciences. – The revenue derived from the special plate shall be transferred quarterly to the Friends of the North Carolina State Museum of Natural Sciences for its programs in support of the museum.

(2) The North Carolina Zoological Society. – The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs

and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro."

SECTION 7. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b39) Alpha Phi Alpha Fraternity. – The Division must receive 300 or more applications for the Alpha Phi Alpha Fraternity plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Alpha Phi Alpha Fraternity plates to the Association of North Carolina Alphamen (ANCA) Educational Foundation for scholarships for the benefit of African-American males in ANCA attending accredited North Carolina colleges and universities.

(b40) ARC of North Carolina. – The Division must receive 300 or more applications for the Arc of North Carolina plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Arc of North Carolina plates to The Arc of North Carolina, Inc., for its programs in support of retarded citizens in North Carolina.

(b41) Autism Society of North Carolina. – The Division must receive 300 or more applications for an Autism Society of North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Autism Society of North Carolina plates to the Autism Society of North Carolina, Inc., for support services to individuals with autism and their families.

(b42) Buddy Pelletier Surfing Foundation. – The Division must receive 300 or more applications for the Buddy Pelletier Surfing Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Buddy Pelletier Surfing Foundation to the Foundation to fund the Foundation's scholastic and humanitarian aid programs.

(b43) Coastal Conservation Association. – The Division must receive 300 or more applications for the Coastal Conservation Association plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Coastal Conservation Association plates to the Division of Marine Fisheries for its conservation programs.

(b44) Guilford Battleground Company. – The Division must receive 300 or more applications for a Guilford Battleground Company plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Guilford Battleground Company plates to the Guilford Battleground Company for its programs.

(b45) National Multiple Sclerosis Society. – The Division must receive 300 or more applications for the National Multiple Sclerosis Society plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the National Multiple Sclerosis Society plates to the National Multiple Sclerosis Society for its public awareness programs.

(b46) National Wild Turkey Federation. – The Division must receive 300 or more applications for the National Wild Turkey Federation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the National Wild Turkey

Federation plates to the North Carolina State Chapter of the National Wild Turkey Federation for special projects to benefit the public.

(b47) SCUBA. – The Division must receive 300 or more applications for the SCUBA plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Plate Account derived for the sale of the SCUBA plates to the Division of Marine Fisheries for the purpose of developing the State's artificial reefs.

(b48) Share the Road. – The Division must receive 300 or more applications for the Share the Road plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Share the Road plates to the Department of Transportation, Division of Bicycle and Pedestrian Transportation, for its programs.

(b49) North Carolina Wildlife Habitat Foundation. – The Division must receive 300 or more applications for the North Carolina Wildlife Habitat Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the North Carolina Wildlife Habitat Foundation plates to the North Carolina Wildlife Habitat Foundation for its programs.

(b50) Shag Dancing. – The Division must receive 300 or more applications for the Shag Dancing plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Shag Dancing plates to the Hall of Fame Foundation.

(b51) North Carolina Libraries. – The Division must receive 300 or more applications for the North Carolina Libraries plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the North Carolina Libraries plates to the North Carolina Library Association, Inc., for the Association's public programs.

(b52) NC Trout Unlimited. – The Division must receive 300 or more applications for an NC Trout Unlimited plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Trout Unlimited plates to North Carolina Trout Unlimited for its programs."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

Became law upon approval of the Governor at 2:03 p.m. on the 20th day of July, 2005.

S.B. 552 **Session Law 2005-217**

AN ACT TO PROVIDE AN UNAUTHORIZED INSURER AGAINST WHICH AN EMERGENCY CEASE AND DESIST ORDER HAS BEEN ISSUED TO PETITION THE DEPARTMENT OF INSURANCE FOR A HEARING ON THE MATTER AND TO APPEAL THAT DECISION TO THE SUPERIOR COURT OF WAKE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-28-20 reads as rewritten:

"§ **58-28-20. Cease and desist ~~orders.~~orders; judicial review.**

(a) Whenever the ~~Commissioner, from evidence satisfactory to him,~~ Commissioner has reasonable grounds to believe that any person is violating or is about to violate G.S. 58-28-5, ~~he~~ the Commissioner may, after notice and opportunity for hearing, ~~reduce his findings to writing~~ make written findings and issue and cause to be served upon ~~such~~ the person an order to cease and desist ~~from~~ violating G.S. 58-28-5.

(b) Until the expiration of the time allowed under ~~G.S. 58-28-25(a)~~G.S. 58-2-75 for filing a petition for review, ~~if no such petition has been duly filed within such time; or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the Court,~~ the Commissioner may at any time, upon ~~such~~ notice and in ~~such~~ a manner ~~as he~~the Commissioner considers proper, modify or set aside in whole or in part any order issued by ~~him~~ the Commissioner under this ~~section.~~section as follows:

(1) Any time before the expiration of the time allowed for seeking judicial review, if no petition for review has been filed; or

(2) If a petition for review has been timely filed, until the transcript of the record in the proceeding has been filed with the Court.

(c) ~~After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time,~~ If no petition for judicial review has been filed within the time provided under G.S. 58-2-75, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by ~~him~~ the Commissioner under this section, whenever in ~~his~~ the Commissioner's opinion conditions of fact or of law have so changed as to require such action or if the public interest requires.

(d) Whenever the Commissioner has evidence that any person has or is violating G.S. 58-28-5, or has or is violating any order or requirement of the Commissioner issued ~~or promulgated~~ by the Commissioner under this Article, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue ~~a~~ an emergency cease and desist ~~order. Notice of the cease and desist order and notice of hearing shall be delivered by first-class mail.~~ order that shall become effective on the date specified in the order or upon service of a certified copy of the order upon the person ordered to cease and desist, whichever is later. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner as provided under subsection (b) of this section.

(e) Any person required to cease and desist violating G.S. 58-28-5 by an order issued after notice and a hearing under subsection (a) or (d) of this section may seek judicial review of that order under G.S. 58-2-75."

SECTION 2. G.S. 58-28-25 is repealed.

SECTION 3. This act becomes effective October 1, 2005, and applies to orders issued on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 2005.

Became law upon approval of the Governor at 2:04 p.m. on the 20th day of July, 2005.

S.B. 128 **Session Law 2005-218**

AN ACT ADOPTING OFFICIAL STATE DANCES.

Whereas, clogging and shagging are popular dances that have entertained both participants and spectators in this State for decades; and

Whereas, clogging is a traditional American folk dance that developed during the Colonial period in the Southern Appalachian mountains of the United States; and

Whereas, clogging has been influenced by European, African-American, and Native American folk dance traditions; and

Whereas, clogging is characterized by distinct, dignified, and beautiful footwork performed by individuals, couples, and groups; and

Whereas, a number of clogging events and competitions are held across the State each year; and

Whereas, the shag is a form of swing dancing that evolved from the jitterbug and jump blues of the big band jazz era and originated at Carolina Beach during the 1940s; and

Whereas, the shag is most often associated with beach music, which refers to songs that are rhythm and blues based and, according to Bo Bryan, a noted shag historian and resident of Beaufort County, is a term that was coined at Carolina Beach; and

Whereas, rhythm and blues groups, such as Jimmy Cavallo and the Houserockers, bolstered the popularity of the shag during the 1940s when they performed in Fayetteville, White Lake, and other areas around the State; and

Whereas, today, the shag is a recognized dance in national and international dance competitions held across the United States; and

Whereas, North Carolina is home to some of the most successful national shag champions, including multiple championship title winners, including Charlie Womble, Jackie McGee, Michael Norris, LeAnn Best, and Sam and Sarah West; and

Whereas, North Carolina natives Clarice Reavis of Fayetteville and Harry Driver of Dunn are recognized as Queen of Shag and Father of Shag respectively; and

Whereas, numerous North Carolinians have been inducted into the Shaggers Hall of Fame; and

Whereas, North Carolina has the most beach music clubs in the nation and has a number of radio stations that depend solely upon the listenership of shag enthusiasts; and

Whereas, it is fitting to adopt clogging and shagging as official State dances; Now, therefore,

The General Assembly of North Carolina enacts:

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

"**§ 145-24. Official State dances.**

(a) Clogging is adopted as the official folk dance of North Carolina.

(b) Shagging is adopted as the official popular dance of North Carolina."

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

In the General Assembly read three times and ratified this the 13th day of July, 2005.

Became law upon approval of the Governor at 2:06 p.m. on the 20th day of July, 2005.

H.B. 1051 **Session Law 2005-219**

AN ACT TO ENABLE THE CREATION OF A MACON-JACKSON REGIONAL AIRPORT AUTHORITY; TO LIMIT OPERATIONS OF SOME FIXED AND ROTARY WING AIRCRAFT; AND TO CHANGE THE MEMBERSHIP OF THE JACKSON COUNTY AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby created the "Macon-Jackson Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

SECTION 2. The Airport Authority shall consist of not less than five and not more than nine members. The exact provisions relating to the appointment, terms, succession, removal, and vacancies of members and other similar matters shall be jointly determined and adopted by a resolution of the board of county commissioners of each county.

Each member shall take and subscribe before the Clerk of Court of Macon County or the Clerk of Court of Jackson County, depending on the member's residence, an oath of office and file that oath with the board of county commissioners of both counties. Membership on the Airport Authority and the Macon County Board of Commissioners or the Jackson County Board of Commissioners shall not constitute dual office holding within the meaning of Section 9 of Article VI of the North Carolina Constitution.

SECTION 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners and the Jackson County Board of Commissioners from time to time jointly determine. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

SECTION 4.(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the counties and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the counties of Macon and Jackson.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or

otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the counties of Macon or Jackson depending on the location of the airport.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the board of commissioners of the county in which the real property is located.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these

improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

SECTION 4.(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 5. The Airport Authority may acquire from the counties by agreement with the counties, and the counties may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the counties.

SECTION 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

SECTION 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County or Jackson County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County and Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

SECTION 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners and the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County or Jackson County, or any subdivision thereof, or to impose any obligation on Macon County or Jackson County, or any of its subdivisions, except when that power is expressly granted by statute.

SECTION 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County

and Jackson County to control, regulate, and provide for the development of aviation in Macon County or Jackson County.

SECTION 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

SECTION 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

SECTION 12. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners. The Macon County Board of Commissioners and the Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners or the Jackson County Board of Commissioners.

SECTION 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

SECTION 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

SECTION 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the county in which the property is located; and on the sale of that property, the proceeds shall vest in the county in which the property is located.

SECTION 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners and the Jackson County Board of Commissioners, acting jointly, and nothing in this act shall require either board of commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Macon-Jackson Regional Airport Authority.

SECTION 17. Upon the creation of the Macon-Jackson Regional Airport Authority, either county may elect to dissolve its current county Airport Authority. The dissolution may be effectuated by a resolution of the board of county commissioners following a public hearing held on the matter, or by a resolution of the board of county commissioners ratifying a favorable binding referendum on the question of the dissolution. The referendum on the dissolution may be held at the same time as any other state or county primary, election, special election, or referendum.

SECTION 18. No fixed wing or rotary wing commercial flights may originate or terminate in Macon County or Jackson County unless they originate or terminate from an airport approved by the Federal Aviation Authority and operated pursuant to Chapter 63 of the General Statutes. This section shall not apply to fixed wing or rotary wing aircraft operated by or at the direction of governmental agencies or providing medical air services.

SECTION 19.(a) Section 2 of S.L. 1997-22 reads as rewritten:

"Section 2. The Airport Authority shall consist of ~~six~~ five members, who shall be residents of Jackson County and who shall be appointed to staggered terms of six years by the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining two initial appointments to the Airport Authority shall be for six years. When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Jackson County Board of Commissioners who shall select one from that list to fill the unexpired term of the vacant office. Each member shall take and subscribe before the Clerk of Superior Court of Jackson County an oath of office and file the same with the Jackson County Board of Commissioners. Membership on the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina."

SECTION 19.(b) The reduction in membership of the Jackson County Airport Authority in consequence of subsection (a) of this section shall be implemented by not filling one of the vacancies in existence when this bill becomes law, or if there be no vacancy, by not filling one seat the next time a vacancy arises.

SECTION 20. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SECTION 21. Sections 1 through 17 of this act shall expire on January 1, 2007, if the Macon County Board of County Commissioners and the Jackson County Board of County Commissioners have not appointed members of the Macon-Jackson Regional Airport Authority prior to that date.

SECTION 22. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2005.

Became law on the date it was ratified.

H.B. 580 **Session Law 2005-220**

AN ACT TO AUTHORIZE THE CITY OF BELMONT AND THE TOWN OF TROUTMAN TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

CITY OF BELMONT OCCUPANCY TAX

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

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

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

The following definitions apply in this subsection:

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

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

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

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

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall

promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

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

TOWN OF TROUTMAN OCCUPANCY TAX

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

SECTION 3.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

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

The following definitions apply in this subsection:

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

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

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

SECTION 4. Troutman Tourism Development Authority. – (a) Appointment and Membership. – When the Town of Troutman Board of Aldermen adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of

Aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 4.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 4.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Town of Troutman Board of Aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Aldermen may require.

ADMINISTRATIVE PROVISIONS

SECTION 5. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

EFFECTIVE DATE

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2005.

Became law on the date it was ratified.

H.B. 1434 **Session Law 2005-221**

AN ACT TO AUTHORIZE SERVICE OF PROCESS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE BY SIGNATURE CONFIRMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j)(1) reads as rewritten:

"(1) Natural Person. – Except as provided in subsection (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to ~~him~~ the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served."

SECTION 2. G.S. 1A-1, Rule 4(j2)(2) reads as rewritten:

"(2) Registered or Certified ~~Mail~~ Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail~~ mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4)~~G.S. 1-75.10(4), ~~or G.S. 1-75.10(5),~~ 1-75.10(5), or 1-75.10(6), as appropriate. This affidavit together with the return or delivery receipt or copy of the proof of delivery provided by the United States Postal Service signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address."

SECTION 3. G.S. 1-75.10 is amended by adding a new subdivision to read:

"(6) Service by Signature Confirmation. – In the case of service by signature confirmation as provided by the United States Postal Service, by affidavit of the serving party averring all of the following:

a. That a copy of the summons and complaint was deposited in the post office for mailing by signature confirmation.

b. That it was in fact received as evidenced by the attached proof of delivery obtained from the United States Postal Service, or other evidence satisfactory to the court of delivery to the addressee.

c. That the copy of the signature confirmation or other evidence of delivery is attached."

SECTION 4. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 2:00 p.m. on the 27th day of July, 2005.

H.B. 1280 **Session Law 2005-222**

AN ACT TO DIRECT THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE GENERAL ASSEMBLY ON STRATEGIES TO BEST UTILIZE FEDERAL FUNDS FOR RAIL IMPROVEMENTS SUCH AS SERVICE TO WESTERN AND SOUTHEASTERN NORTH CAROLINA AND RESTORATION OF THE WALLACE TO CASTLE HAYNE RAIL CORRIDOR.

Whereas, expanding and upgrading passenger, freight, commuter, and short line rail service is important to the economy of North Carolina; and

Whereas, the citizens of this State have stated their support for expanded passenger rail service through resolutions from over 100 cities, towns, and organizations submitted to the House Interim Committee on Expanding Rail Service in the fall of 2004; and

Whereas, Congress is debating reauthorization of the federal Surface Transportation Program; and

Whereas, Congress is considering new and innovative means of financing construction of transportation infrastructure, including highways, transit, intermodal, and rail projects; and

Whereas, Congress is debating reform of the National Railroad Passenger Corporation, known as Amtrak, and the result may be more responsibilities for rail transferred to the states; and

Whereas, it is in the best interest of the State of North Carolina to respond in a timely way to these proposed changes as they impact our transportation programs and economic development opportunities; and

Whereas, many rail corridors in the State, such as the Wallace to Castle Hayne rail corridor, are in need of restoration and improvement; and

Whereas, many rail initiatives in the State, including service to western and southeastern North Carolina, are in need of federal and State investment; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Transportation is directed, no more than 60 days following enactment of reauthorization of the federal Surface Transportation Program, to develop and report its recommendations on strategies, using funds available to the Department, to provide matching funds so the State can leverage the maximum federal and private participation in funding needed rail initiatives, such as the restoration of the rail corridor from Wallace to Castle Hayne, a rail connection between north-south and east-west routes in the vicinity of Pembroke, service to Winston-Salem, and service to the western and southeastern parts of the State.

SECTION 2. The Department shall submit its report to the Joint Appropriations Subcommittee on Transportation or, if the General Assembly is not in session, to the Joint Legislative Transportation Oversight Committee.

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

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 2:56 p.m. on the 27th day of July, 2005.

H.B. 737 **Session Law 2005-223**

AN ACT TO REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED, LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS FOR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO FIVE; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; AMEND THE UTILIZATION REVIEW LAWS TO CLARIFY THAT SUCH LAWS PLAINLY APPLY TO INDIVIDUAL INSURANCE COVERAGE AS WELL AS GROUP COVERAGE; TO REMOVE FROM THE UNIFORM CREDENTIALING STATUTE AN UNNECESSARY PROVISION; ENSURE THAT COVERED PERSONS RECEIVING EXTERNAL REVIEW KNOW WHAT INFORMATION THEIR INSURER PROVIDES TO THE EXTERNAL REVIEW ORGANIZATION PERFORMING THE REVIEW; AND ELIMINATE EXTERNAL REVIEW OUTSIDE OF NORMAL BUSINESS HOURS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually

to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsection to read:

"§ **58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

…

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including physical and mental illnesses).

(3) Claims experience.

(4) Duration from issue.

(5) Receipt of health care.

(6) Medical history.

(7) Genetic information."

SECTION 2.(a) G.S. 58-65-60 is amended by adding the following new subsection to read:

"§ **58-65-60. Subscribers' contracts; required and prohibited provisions.**

…

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(b) G.S. 58-67-85 is amended by adding the following new subsection to read:

"§ **58-67-85. Master group contracts, filing requirement; required and prohibited provisions.**

…

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 2.(c) G.S. 58-51-80(c) reads as rewritten:

"§ **58-51-80. Group accident and health insurance defined.**

…

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 3. G.S. 58-51-30(b) reads as rewritten:

"§ **58-51-30. Policies to cover newborn infants, foster children, and adopted children.**

…

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted

child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

SECTION 4.(a) G.S. 58-51-15(a)(2) reads as rewritten:

"§ **58-51-15. Accident and health policy provisions.**

(a) Required Provisions. – Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the substance of the words that appear in this section. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

…

(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars ($5,000) or more for any one sickness or injury; disability income policies affording benefits of one hundred dollars ($100.00) or more per month for not less than 12 months; and franchise policies. Other policies to which this section applies must delete the words "except fraudulent misstatements."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage.

Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 4.(b) G.S. 58-51-15(h) reads as rewritten:

"§ **58-51-15. Accident and health policy provisions.**

…

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~to policies issued to eligible individuals under G.S. 58-68-60.

~~(1) Policies issued to eligible individuals under G.S. 58-68-60.~~

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

SECTION 5. G.S. 58-50-150(b) reads as rewritten:

"§ **58-50-150. North Carolina Small Employer Health Reinsurance Pool.**

…

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ five members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Four of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

SECTION 6. G.S. 58-54-45(a) reads as rewritten:

"§ **58-54-45. By reason of disability.**

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 7. G.S. 58-3-100(c) reads as rewritten:

"§ **58-3-100. Insurance company licensing provisions.**

…

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of a life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

SECTION 8. G.S. 58-50-61(a) is amended by adding the following new subdivision to read:

"§ **58-50-61. Utilization review.**

(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article, the term:

…

(2a) 'Certificate of coverage' includes a policy of insurance issued to an individual person or a franchise policy issued pursuant to G.S. 58-51-90.

…."

SECTION 9. G.S. 58-3-230(a) reads as rewritten:

"§ **58-3-230. Uniform provider credentialing.**

(a) An insurer that provides a health benefit plan and that credentials providers for its networks shall maintain a process to assess and verify the qualifications of a licensed health care ~~practitioner, or applicant for licensure as a health care practitioner,~~ practitioner within 60 days of receipt of a completed provider credentialing application form approved by the Commissioner. When a health care practitioner joins a practice that is under contract with an insurer to participate in a health benefit plan, the effective date of the health care practitioner's participation in the health benefit plan network shall be the date the insurer approves the practitioner's credentialing application."

SECTION 10.(a) G.S. 58-50-80(b)(4) reads as rewritten:

"§ **58-50-80. Standard external review.**

…

(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

…

(4) Notify the insurer in writing whether the request for external review has been accepted. If the request has been accepted, the notice shall direct the insurer or its designee utilization review organization to provide to the assigned ~~organization,~~organization and to the covered person or authorized representative who made the request for external review on behalf of the covered person, within seven days of receipt of the notice, the documents and any information considered in making the noncertification appeal decision or the second-level grievance review decision."

SECTION 10.(b) G.S. 58-50-82(c) reads as rewritten:

"§ **58-50-82. Expedited external review.**

…

(c) As soon as possible, but within the same day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision or the second-level grievance review decision to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method. A copy of the same information shall be sent by the same means or other expeditious means to the covered person or the covered person's representative who made the request for expedited external review."

SECTION 11. The first sentence of G.S. 58-50-82(b) reads as rewritten:

"§ **58-50-82. Expedited external review.**

…

(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:".

SECTION 12. G.S. 58-50-82(e) reads as rewritten:

"§ **58-50-82. Expedited external review.**

…

(e) As expeditiously as the covered person's medical condition or circumstances require, but not more than four business days after the date of receipt of the request for an expedited external review, the assigned organization shall make a decision to uphold or reverse the noncertification, noncertification appeal decision, or second-level grievance review decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal grievance process under G.S. 58-50-61 and G.S. 58-50-62."

SECTION 13. Sections 1 through 4 of this act become effective January 1, 2006, and apply to policies or certificates issued or renewed on or after that date. Sections 9 through 12 of this act become effective October 1, 2005, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 2:59 p.m. on the 27th day of July, 2005.

S.B. 626 **Session Law 2005-224**

AN ACT TO BRING NORTH CAROLINA LAW INTO COMPLIANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; TO PROVIDE SPECIAL ENROLLMENT PERIODS WITHOUT PENALTY FOR PERSONS ENROLLED UNDER A GROUP PLAN WHOSE COVERAGE IS TERMINATED WHEN AN INSURER DISCONTINUES WRITING A CERTAIN TYPE OF GROUP HEALTH INSURANCE COVERAGE THROUGHOUT THAT ENTIRE SMALL OR LARGE GROUP MARKET; AND TO PROVIDE CONTINUED GUARANTEED ISSUE RIGHTS TO A PERSON WHO IS HIPAA ELIGIBLE, WHO IS INSURED IN THE INDIVIDUAL MARKET, AND WHOSE INSURER DISCONTINUES WRITING A CERTAIN TYPE OF HEALTH INSURANCE COVERAGE THROUGHOUT THE ENTIRE INDIVIDUAL MARKET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-68-30(c) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
b. Group or individual health insurance coverage.
c. Part A or part B of title XVIII of the Social Security Act.
d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
e. Chapter 55 of title 10, United States Code.
f. A medical care program of the Indian Health Service or of a tribal organization.
g. A State health benefits risk pool.
h. A health plan offered under chapter 89 of title 5, United States Code.
i. A public health plan (as defined in federal regulations).
j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
k. ~~The Health Insurance Program for Children established in Part 8 of Chapter 108A of the General Statutes, or any successor program.~~ Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section and G.S. 58-51-15(a)(2)b.

(2) Not counting periods before significant breaks in coverage. –

a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health insurance plan, if, after the period and before the

enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (d)(4) of this subsection, any period that an individual is in a waiting period for any coverage under a group health insurance plan or is in an affiliation period shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.

c. Time spent on short term limited duration health insurance not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision, any period that an individual is enrolled on a short term limited duration health insurance policy shall not be taken into account in determining the continuous period under sub-subdivision. a. of this subdivision so long as the period of time spent on the short term limited duration health insurance policy or policies does not exceed 12 months.

d. For an individual who elects COBRA continuation coverage during the second election period provided under the Trade Act of 2002, the days between the date the individual lost group health plan coverage and the first day of the second COBRA election period shall not be considered when determining whether a significant break in coverage has occurred.

(3) Method of crediting coverage. –

a. Standard method. – Except as otherwise provided under sub-subdivision b. of this subdivision for the purposes of applying subdivision (a)(3) of this subsection, a group health insurer shall count a period of creditable coverage without regard to the specific benefits covered during the period.

b. Election of alternative method. – A group health insurer may elect to apply subdivision (a)(3) of this subsection based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations rather than as provided under sub-subdivision a. of this subdivision. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

c. Health insurer notice. – In the case of an election under sub-subdivision b. of this subdivision with respect to health insurance coverage in the small or large group market, the health insurer: (i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the health insurer has made the election, and (ii) shall include in the statements a description of the effect of the election.

(4) Establishment of period. – Periods of creditable coverage for an individual shall be established through presentation of certifications described in subsection (e) of this section or in another manner that is specified in federal regulations."

SECTION 2.1. G.S. 58-68-30(f)(1) reads as rewritten:

"(1) Individuals losing other coverage. – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

a. The employee or dependent was covered under an ERISA group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

b. The employee stated in writing at the time that coverage under the group health plan or health insurance coverage was the reason for declining enrollment, but only if the health insurer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time.

c. ~~The~~ With respect to the employee's or dependent's coverage under a plan described in sub-subdivision ~~a.:~~ a. of this subdivision, at least one of the following applies: (i) the coverage was under a COBRA continuation provision and the coverage under the provision was exhausted; (ii) the coverage was not under ~~that~~ a COBRA continuation provision and ~~either~~ the coverage was terminated because of loss of eligibility for the coverage, including legal separation, divorce, ~~death,~~ cessation of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan), death of an employee, termination of employment, ~~or~~ reduction in the number of hours of ~~employment;~~ employment, and any loss of eligibility for coverage after a period that is measured by reference to any of the foregoing; ~~or~~ (iii) the employer terminated contributions toward the ~~coverage were terminated.~~coverage; (iv) the individual lost coverage because the individual no longer resided, lived, or worked in the service area (whether or not within the choice of the individual) if the coverage was offered through an arrangement that did not provide benefits to individuals who no longer reside, live, or work in a service area, and no other benefit package is available to the individual; (v) an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; or (vi) a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

d. Under the terms of the plan, the employee requests the enrollment not later than 30 days after the ~~date of exhaustion of coverage~~ applicable event described in sub-subdivision ~~c.(i) of this subdivision or termination of coverage or employer~~

~~contribution described in sub-subdivision c.(ii)~~ c. of this subdivision."

SECTION 2.2. G.S. 58-68-30(f)(1), as amended by Section 2.1 of this bill, reads as rewritten:

"(1) Individuals losing other coverage. – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

a. The employee or dependent was covered under an ERISA group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

b. The employee stated in writing at the time that coverage under the group health plan or health insurance coverage was the reason for declining enrollment, but only if the health insurer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time.

c. With respect to the employee's or dependent's coverage described in sub-subdivision a. of this subsection: (i) the coverage was under a COBRA continuation provision and the coverage under the provision was exhausted; (ii) the coverage was not under that provision and either the coverage was terminated because of loss of eligibility for the coverage, including legal separation, divorce, cessation of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan), death of an employee, termination of employment, reduction in the number of hours of employment, and any loss of eligibility for coverage after a period that is measured by reference to any of the foregoing; (iii) employer contributions toward the coverage were terminated; (iv) in the case of coverage offered through an arrangement that does not provide benefits to individuals who no longer reside, live, or work in a service area, there has been loss of coverage because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual), and no other benefit package is available to the individual; (v) an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; or (vi) a plan no longer offers any benefits to the class of similarly situated individuals that includes the ~~individual.~~ individual; or (vii) the health insurer terminated coverage under G.S. 58-68-45(c)(2).

d. Under the terms of the plan, the employee requests the enrollment not later than 30 days after the date of the applicable event described in sub-subdivision c. of this subdivision."

SECTION 3. G.S. 58-68-60 is amended by adding the following new subsections to read:

"(i) Rights of Replacement Coverage Upon Termination. – Subsection (a) of this section shall apply to an eligible individual whose coverage issued under this section is terminated by a health insurer under G.S. 58-68-65(c)(2) the application for the replacement coverage is dated not more than 63 days following the termination date.

(j) Waiting Period. – In determining the length of any break in coverage for an individual as prescribed in G.S. 58-68-60(b)(1)(i), a significant break in coverage does not occur during the waiting period. The "waiting period" is defined as the period that begins on the date the individual submits a substantially complete application for coverage and ends on:

(1) The date coverage begins, if the application results in coverage, or

(2) The date on which the application is denied by the issuer or the date on which the offer for coverage lapses, if the application does not result in coverage."

SECTION 4. G.S. 58-68-30(b) reads as rewritten:

"(b) Definitions. – For the purposes of this Part:

(1) Enrollment date. – With respect to an individual covered under a group health insurance plan, the date of enrollment of the individual in the coverage or, if earlier, the first day of the waiting period for the enrollment. An individual's enrollment date does not change if the individual receiving benefits under a group health insurance plan changes benefit packages or if the plan changes health insurers.

(2) Late enrollee. – With respect to coverage under a group health insurance plan, a participant or beneficiary who enrolls under the plan other than during:

a. The first period in which the individual is eligible to enroll under the plan, or

b. A special enrollment period under subsection (f) of this section.

(3) Preexisting condition exclusion. –

a. In general. – "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the ~~date of enrollment for the coverage,~~ effective date of coverage under a group health plan or group health insurance coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before ~~the date.~~ that day. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage under a group health plan or group health insurance coverage, such as a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

b. Treatment of genetic information. – Genetic information shall not be treated as a condition described in subdivision (a)(1) of this subsection in the absence of a diagnosis of the condition related to the information.

(4) Waiting period. –

a. With respect to a group health insurance plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

b. If an employee or dependent enrolls as a late enrollee or special enrollee, any period before the late or special enrollment is not a waiting period.

c. If an individual seeks individual health insurance coverage, a waiting period begins on the date the individual submits a substantially complete application and ends on: (i) the date coverage begins if the application results in coverage; or (ii) the date on which the application is denied by the health insurer or the date on which the offer for coverage lapses if the application does not result in coverage."

SECTION 5. Section 2.1 of this act is effective when it becomes law and applies to all health benefit plans that are delivered, issued for delivery, or renewed on or after that date. Sections 2.2 and 3 of this act become effective January 1, 2006, and apply to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. The remainder of this act is effective when it becomes law and applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 3:50 p.m. on the 27th day of July, 2005.

S.B. 533 **Session Law 2005-225**

AN ACT TO REVISE AND CLARIFY THE LAW PROVIDING FOR A CHILD'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-17 reads as rewritten:

"§ **30-17. When children entitled to an allowance.**

Whenever any parent dies ~~leaving~~ survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be ~~entitled, besides its share of the estate of such deceased parent, to~~entitled to receive an allowance of two thousand dollars ($2,000) for ~~its~~ the child's support for the year next ensuing the death of such ~~parent, less, however, the value of any articles consumed by said child since the death of said~~ parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and

shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased ~~parent,~~ parent shall, within one year after the parent's death, ~~shall~~ assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, ~~it~~ the allowance shall be paid to ~~its~~ the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

SECTION 2. This act becomes effective October 1, 2005, and applies to estates of persons dying on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 3:51 p.m. on the 27th day of July, 2005.

S.B. 776 **Session Law 2005-226**

AN ACT TO AMEND THE INDECENT EXPOSURE LAW TO APPLY TO INDECENT EXPOSURE TO PERSONS OF THE SAME SEX WITH GREATER PENALTIES FOR INDECENT EXPOSURE TO PERSONS UNDER AGE SIXTEEN, AND TO REQUIRE SEX OFFENDER REGISTRATION UPON FELONY CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.9 reads as rewritten:

"§ **14-190.9. Indecent exposure.**

(a) ~~Any~~ Unless the conduct is punishable under subsection (a1) of this section, any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, ~~of the opposite sex,~~ except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(a1) Unless the conduct is prohibited by another law providing greater punishment, any person at least 18 years of age who shall willfully expose the private parts of his or her person in any public place in the presence of any other person less than 16 years of age for the purpose of arousing or gratifying sexual desire shall be

guilty of a Class H felony. An offense committed under this subsection shall not be considered to be a lesser included offense under G.S. 14-202.1.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech."

SECTION 2. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 2005.

Became law upon approval of the Governor at 3:51 p.m. on the 27th day of July, 2005.

H.B. 1332 **Session Law 2005-227**

AN ACT TO FACILITATE ELECTRONIC PURCHASE AND SALE OF LOCAL GOVERNMENT PROPERTY AND TO MAKE OTHER PURCHASING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129(a) and (g) read as rewritten:

"§ **143-129. Procedure for letting of public contracts.**

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three hundred thousand dollars ($300,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars ($90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State

government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the ~~manager or the~~ manager, school superintendent, chief purchasing ~~official, or both,~~ official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

…

(g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or ~~the manager or purchasing official delegated authority~~the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of ~~notice, in a newspaper of general circulation in the area served by the governing body,~~notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

SECTION 2. G.S. 143-131(a) reads as rewritten:

"§ **143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of ~~five thousand dollars ($5,000)~~thirty thousand dollars ($30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such

contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded."

SECTION 3. G.S. 160A-266(c) reads as rewritten:

"§ **160A-266. Methods of sale; limitation.**

…

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five thousand dollars ($5,000)~~thirty thousand dollars ($30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five thousand dollars ($5,000)~~ thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange."

SECTION 4. G.S. 160A-270(c) reads as rewritten:

"§ **160A-270. Public auction.**

…

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all ~~All~~ requirements of subsections (a) and (b) of this section apply to electronic auctions."

SECTION 5. This act raises the threshold amount in G.S. 143-131 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 3:55 p.m. on the 27th day of July, 2005.

H.B. 1221 **Session Law 2005-228**

AN ACT TO ESTABLISH THE APPOINTMENT OF PARENTING COORDINATORS IN DOMESTIC CHILD CUSTODY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 5.
"Parenting Coordinator.

"**§ 50-90. Definitions.**

As used in this Article, the following terms mean:

(1) High-conflict case. – A child custody action involving minor children brought under Article 1 of this Chapter where the parties demonstrate an ongoing pattern of any of the following:
   a. Excessive litigation.
   b. Anger and distrust.
   c. Verbal abuse.
   d. Physical aggression or threats of physical aggression.
   e. Difficulty communicating about and cooperating in the care of the minor children.
   f. Conditions that in the discretion of the court warrant the appointment of a parenting coordinator.

(2) Minor child. – A person who is less than 18 years of age and who is not married or legally emancipated.

(3) Parenting coordinator. – An impartial person who meets the qualifications of G.S. 50-93.

"**§ 50-91. Appointment of parenting coordinator.**

(a) The court may appoint a parenting coordinator at any time during the proceedings of a child custody action involving minor children brought under Article 1 of this Chapter if all parties consent to the appointment. The parties may agree to limit the parenting coordinator's decision-making authority to specific issues or areas.

(b) The court may appoint a parenting coordinator without the consent of the parties upon entry of a custody order other than an ex parte order, or upon entry of a parenting plan only if the court also makes specific findings that the action is a high-conflict case, that the appointment of the parenting coordinator is in the best interests of any minor child in the case, and that the parties are able to pay for the cost of the parenting coordinator.

(c) The order appointing a parenting coordinator shall specify the issues the parenting coordinator is directed to assist the parties in resolving and deciding. The order may also incorporate any agreement regarding the role of the parenting coordinator made by the parties under subsection (a) of this section. The court shall give a copy of the appointment order to the parties prior to the appointment conference. Notwithstanding the appointment of a parenting coordinator, the court shall retain exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

(d) The court shall select a parenting coordinator from a list maintained by the district court. Prior to the appointment conference, the court must complete and give to the parenting coordinator a referral form listing contact information for the parties and

their attorneys, the court's findings in support of the appointment, and any agreement by the parties.

"§ **50-92. Authority of parenting coordinator.**

(a) The authority of a parenting coordinator shall be specified in the court order appointing the parenting coordinator and shall be limited to matters that will aid the parties:

(1) Identify disputed issues.
(2) Reduce misunderstandings.
(3) Clarify priorities.
(4) Explore possibilities for compromise.
(5) Develop methods of collaboration in parenting.
(6) Comply with the court's order of custody, visitation, or guardianship.

(b) Notwithstanding subsection (a) of this section, the court may authorize a parenting coordinator to decide issues regarding the implementation of the parenting plan that are not specifically governed by the court order and which the parties are unable to resolve. The parties must comply with the parenting coordinator's decision until the court reviews the decision. The parenting coordinator, any party, or the attorney for any party may request an expedited hearing to review a parenting coordinator's decision. Only the judge presiding over the case may subpoena the parenting coordinator to appear and testify at the hearing.

(c) The parenting coordinator shall not provide any professional services or counseling to either parent or any of the minor children. The parenting coordinator shall refer financial issues to the parties' attorneys.

"§ **50-93. Qualifications.**

(a) To be eligible to be included on the district court's list of parenting coordinators, a person must meet all of the following requirements:

(1) Hold a masters or doctorate degree in psychology, law, social work, counseling, medicine, or a related subject area.
(2) Have at least five years of related professional post-degree experience.
(3) Hold a current license in the parenting coordinator's area of practice, if applicable.
(4) Participate in 24 hours of training in topics related to the developmental stages of children, the dynamics of high-conflict families, the stages and effects of divorce, problem solving techniques, mediation, and legal issues.

(b) In order to remain eligible as a parenting coordinator, the person must also attend parenting coordinator seminars that provide continuing education, group discussion, and peer review and support.

"§ **50-94. Appointment conference.**

(a) The parties, their attorneys, and the proposed parenting coordinator must all attend the appointment conference.

(b) At the time of the appointment conference, the court shall do all of the following:

(1) Explain to the parties the parenting coordinator's role, authority, and responsibilities as specified in the appointment order and any agreement entered into by the parties.
(2) Determine the information each party must provide to the parenting coordinator.

(3) Determine financial arrangements for the parenting coordinator's fee to be paid by each party and authorize the parenting coordinator to charge any party separately for individual contacts made necessary by that party's behavior.

(4) Inform the parties, their attorneys, and the parenting coordinator of the rules regarding communications among them and with the court.

(5) Enter the appointment order.

(c) The parenting coordinator and any guardians ad litem shall bring to the appointment conference all necessary releases, contracts, and consents. The parenting coordinator must also schedule the first sessions with the parties.

"§ **50-95. Fees.**

(a) The parenting coordinator shall be entitled to reasonable compensation from the parties for services rendered and to a reasonable retainer. The parenting coordinator may request a hearing in the event of a fee dispute.

(b) The court may make the appointment of a parenting coordinator contingent upon the parties' payment of a specific fee to the parenting coordinator. The parenting coordinator shall not begin any duties until the fee has been paid.

"§ **50-96. Meetings and communications.**

Meetings between the parenting coordinator and the parties may be informal and ex parte. Communications between the parties and the parenting coordinator are not confidential. The parenting coordinator and the court shall not engage in any ex parte communications.

"§ **50-97. Reports.**

(a) The parenting coordinator shall promptly provide written notification to the court, the parties, and attorneys for the parties if the parenting coordinator makes any of the following determinations:

(1) The existing custody order is not in the best interests of the child.

(2) The parenting coordinator is not qualified to address or resolve certain issues in the case.

(b) The court shall schedule a hearing and review the matter no later than two weeks following receipt of the report. The parenting coordinator shall remain involved in the case until the hearing.

(c) If the parties agree to any fundamental change in the child custody order, the parenting coordinator shall send the agreement to the parties' attorneys for preparation of a consent order.

"§ **50-98. Parenting coordinator records.**

(a) The parenting coordinator shall provide the following to the attorneys for the parties and to the parties:

(1) A written summary of the developments in the case following each meeting with the parties.

(2) Copies of any other written communications.

(b) The parenting coordinator shall maintain records of each meeting. These records may only be subpoenaed by order of the judge presiding over the case. The court must review the records in camera and may release the records to the parties and their attorneys only if the court determines release of the information contained in the records will assist the parties with the presentation of their case at trial.

"§ **50-99. Modification or termination of parenting coordinator appointment.**

(a) For good cause shown, the court may terminate or modify the parenting coordinator appointment upon motion of either party at the request of the parenting

coordinator, upon the agreement of the parties and the parenting coordinator, or by the court on its own motion. Good cause includes any of the following:

(1) Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the parenting coordinator.

(2) A determination that the parties no longer need the assistance of a parenting coordinator.

(3) Impairment on the part of a party that significantly interferes with the party's participation in the process.

(4) The parenting coordinator is unable or unwilling to continue to serve.

(b) If the parties agreed to the appointment of the parenting coordinator under G.S. 50-91(a), the court may terminate or modify the appointment according to that agreement or according to a subsequent agreement by the parties.

"§ **50-100. Parenting coordinator immunity.**

A parenting coordinator shall not be liable for damages for acts or omissions of ordinary negligence arising out of that person's duties and responsibilities as a parenting coordinator. This section does not apply to actions arising out of the operation of a motor vehicle."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 4:10 p.m. on the 27th day of July, 2005.

S.B. 887 **Session Law 2005-229**

AN ACT TO REVISE THE STATUTES THAT ADDRESS STATUTORY LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 44A of the General Statutes reads as rewritten:

"Article 2.

"Statutory Liens on Real Property.

"Part 1. Liens of Mechanics, ~~Laborers~~ Laborers, and Materialmen Dealing with Owner.

"§ **44A-7. Definitions.**

Unless the context otherwise requires in this Article:

(1) "Improve" means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, and rental of equipment directly utilized on the real property in making the improvement.

(2) "Improvement" means all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling,

or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.

(3) An "owner" is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

(4) "Real property" means the real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

"§ **44A-8. Mechanics', ~~laborers'~~ laborers', and materialmen's lien; persons entitled to ~~lien.~~claim of lien on real property.**

Any person who performs or furnishes labor or professional design or surveying services or furnishes materials or furnishes rental equipment pursuant to a contract, either express or implied, with the owner of real property for the making of an improvement thereon shall, upon complying with the provisions of this Article, have a right to file a claim of lien on real property on ~~such~~ the real property to secure payment of all debts owing for labor done or professional design or surveying services or material furnished or equipment rented pursuant to ~~such~~ the contract.

"§ **44A-9. Extent of ~~lien.~~claim of lien on real property.**

~~Liens~~ A claim of lien on real property authorized under ~~the provisions of~~ this Article shall extend to the improvement and to the lot or tract on which the improvement is situated, to the extent of the interest of the owner. When the lot or tract on which a building is erected is not surrounded at the time of making the contract with the owner by an enclosure separating it from adjoining land of the same owner, the lot or tract to which any claim of lien on real property extends shall be ~~such~~ the area ~~as~~ that is reasonably necessary for the convenient use and occupation of ~~such~~ the building, but in no case shall the area include a building, structure, or improvement not normally used or occupied or intended to be used or occupied with the building with respect to which the claim of lien on real property is claimed.

"§ **44A-10. Effective date of ~~liens.~~claim of lien on real property.**

~~Liens~~ A claim of lien on real property granted by this Article shall relate to and take effect from the time of the first furnishing of labor or materials at the site of the improvement by the person claiming the ~~lien.~~claim of lien on real property.

"§ **44A-11. Perfecting ~~liens.~~claim of lien on real property.**

~~Liens~~ A claim of lien on real property granted by this Article shall be perfected as of the time ~~set forth~~ provided in G.S. 44A-10 upon the filing of the claim of lien on real property ~~pursuant to~~ under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13.

"§ **44A-12. Filing claim of ~~lien.~~lien on real property.**

(a) Place of Filing. – All claims of lien ~~against any~~ on real property must be filed in the office of the clerk of superior court in each county ~~wherein~~ where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. – Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the

last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

(c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real property must be filed using a form substantially as follows:

CLAIM OF LIEN ON REAL PROPERTY

(1) Name and address of the person claiming the ~~lien:~~claim of lien on real property:

(2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is filed:

(3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)

(4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:

(5) Date upon which labor or materials were first furnished upon said property by the claimant:

(5a) Date upon which labor or materials were last furnished upon said property by the claimant:

(6) General description of the labor performed or materials furnished and the amount claimed therefor:

_____
Lien Claimant

Filed this ____ day of _____, _____

_____
Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.

(d) No Amendment of Claim of ~~Lien.~~ Lien on Real Property. – A claim of lien on real property may not be amended. A claim of lien on real property may be cancelled by a claimant or ~~his~~ the claimant's authorized agent or attorney and a new claim of lien on real property substituted therefor within the time herein provided for original filing.

(e) Notice of Assignment of Claim of ~~Lien.~~ Lien on Real Property. – When a claim of lien on real property has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note ~~said~~ the assignment in the margin of the judgment docket containing the claim of ~~lien.~~ lien on real property. Thereafter the assignee becomes the lien claimant of record.

(f) Waiver of Right to ~~File~~ File, Serve, or Claim Liens as Consideration for Contract Against Public Policy. – An agreement to waive the right to file a claim of lien on real property granted under this Part, or ~~claim~~ an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any contract, either expressed or implied, for the making of an improvement upon real property under

this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

"§ **44A-12.1. No docketing of lien unless authorized by statute.**

(a) The clerk of superior court shall not index, docket, or record a claim of lien on real property or other document purporting to claim or assert a lien on real property in such a way as to affect the title to any real property unless the document:

(1) Is offered for filing under this Article or another statute that provides for indexing and docketing of claims of lien on real property; and

(2) Appears on its face to contain all of the information required by the statute under which it is offered for filing.

(b) The clerk may accept, for filing only, any document that does not meet the criteria established for indexing, docketing, or recording under subsection (a) of this section. If the clerk does accept this document, the clerk shall inform the person offering the document that it will not be indexed, docketed, or recorded in any way as to affect the title to any real property.

(c) Any person who causes or attempts to cause a claim of lien on real property or other document to be filed, knowing that the filing is not authorized by statute, or with the intent that the filing is made for an improper purpose such as to hinder, harass, or otherwise wrongfully interfere with any person, shall be guilty of a Class 1 misdemeanor.

(d) A claim of lien on real property, a claim of lien on real property with a notice of claim of lien upon funds attached thereto, or other document purporting to claim or assert a lien on real property that is filed by an attorney licensed in the State of North Carolina and that otherwise complies with subsection (a) of this section shall not be rejected by the clerk of superior court for indexing, docketing, recording, or filing.

"§ **44A-13. Action to enforce ~~lien.~~claim of lien on real property.**

(a) Where and When Action ~~Instituted.~~ Commenced. – An action to enforce ~~the~~ a claim of lien ~~created by this Article~~ on real property may be ~~instituted~~ commenced in any county ~~in which the lien is filed.~~ where venue is otherwise proper. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the ~~lien.~~ claim of lien on real property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or ~~trustee in bankruptcy,~~ is subject to the control of the bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said real property. The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located within the time required by this section satisfies the requirement for the commencement of a civil action.

(b) Judgment. ~~Judgment~~ A judgment enforcing a lien under this Article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real property subject to the lien thereby enforced.

(c) Notice of Action. ~~Unless the action enforcing the lien created by this Article is instituted in the county in which the lien is filed, in~~ In order for the sale under ~~the provisions of~~ G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming the ~~lien,~~ claim of lien on real property, a notice of lis pendens shall be filed in each county in which the

real property subject to the claim of lien on real property is located except ~~within 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien. It shall not be necessary to file a notice of lis pendens in~~ the county in which the action ~~enforcing the lien~~ is ~~commenced in order for the judgment entered therein and the sale declared thereby to carry with it the priorities set forth in G.S. 44A-14(a). If neither an action nor a~~ commenced. The notice of lis pendens ~~is~~ shall be filed ~~in each county in which the real property subject to the lien is located~~ within ~~180 days after~~ the time provided in subsection (a) ~~last furnishing~~ of this section for ~~labor or materials at~~ the ~~site~~ commencement of the action ~~improvement~~ by the ~~person claiming the lien, as to real property claimed to be subject to the lien in such counties where the~~ lien claimant. If neither an action ~~was neither commenced~~ nor a notice of lis pendens ~~filed,~~is filed in accordance with this section, the judgment entered in the action enforcing the claim of lien on real property shall not direct a sale of the real property subject to the claim of lien on real property enforced thereby nor be entitled to any priority under the provisions of G.S. 44A-14(a), but shall be entitled only to those priorities accorded by law to money judgments.

"§ **44A-14. Sale of property in satisfaction of judgment enforcing claim of lien on real property or upon order prior to judgment; distribution of proceeds.**

(a) Execution Sale; Effect of Sale. – Except as provided in subsection (b) of this section, sales under this Article and distribution of proceeds thereof shall be made in accordance with the execution sale provisions set out in G.S. 1-339.41 through 1-339.76. The sale of real property to satisfy a claim of lien on real property granted by this Article shall pass all title and interest of the owner to the purchaser, good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming a lien.

(b) Sale of Property upon Order Prior to Judgment. – A resident judge of superior court in the district in which the action to enforce the claim of lien on real property is pending, a judge regularly holding the superior courts of the said district, any judge holding a session of superior court, either civil or criminal, in the said district, a special judge of superior court residing in the said district, or the chief judge of the district court in which the action to enforce the claim of lien on real property is pending, may, upon notice to all interested parties and after a hearing thereupon and upon a finding that a sale prior to judgment is necessary to prevent substantial waste, destruction, depreciation or other damage to said real property prior to the final determination of said action, order any real property against which a claim of lien on real property under this Article is asserted, sold in any manner determined by said judge to be commercially reasonable. The rights of all parties shall be transferred to the proceeds of the sale. Application for such order and further proceedings thereon may be heard in or out of session.

"§ **44A-15. Attachment available to lien claimant.**

In addition to other grounds for attachment, in all cases where the owner removes or attempts or threatens to remove an improvement from real property subject to a claim of lien on real property under this Article, without the written permission of the lien claimant or with the intent to deprive the lien claimant of his ~~lien,~~ or her claim of lien on real property, the remedy of attachment of the property subject to the claim of lien on real property shall be available to the lien claimant or any other person.

"§ **44A-16. Discharge of record ~~lien.~~claim of lien on real property.**

Any claim of lien on real property filed under this Article may be discharged by any of the following methods:

(1) The lien claimant of record, ~~his~~ the claimant's agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the claim of lien on real property indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such claim of lien on real property an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, ~~his~~ the claimant's agent or attorney, and witnessed by the clerk of superior court.

(2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record which instrument states that the claim of lien on real property indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on real property by entry of satisfaction on the record of such ~~lien.~~claim of lien on real property.

(3) By failure to enforce the claim of lien on real property within the time prescribed in this Article.

(4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on real property has been dismissed or finally determined adversely to the claimant.

(5) Whenever a sum equal to the amount of the claim or claims of lien ~~or liens~~ on real property claimed is deposited with the clerk of court, to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property or ~~liens~~ claims of lien on real property of record.

(6) Whenever a corporate surety bond, in a sum equal to one and one-fourth times the amount of the ~~lien~~ claim or ~~liens~~ claims of lien on real property claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said claim or claims of lien ~~or liens,~~ on real property, is deposited with the clerk of court, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property ~~or liens~~ of record.

"Part 2. Liens of Mechanics, ~~Laborers~~ Laborers, and Materialmen Dealing with One Other Than Owner.

"§ **44A-17. Definitions.**

Unless the context otherwise requires in this Article:

(1) "Contractor" means a person who contracts with an owner to improve real property.

(2) "First tier subcontractor" means a person who contracts with a contractor to improve real property.

(3) "Obligor" means an owner, contractor or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.

(4) "Second tier subcontractor" means a person who contracts with a first tier subcontractor to improve real property.

(5) "Third tier subcontractor" means a person who contracts with a second tier subcontractor to improve real property.

"§ **44A-18. Grant of ~~lien;~~ lien upon funds; subrogation; perfection.**

Upon compliance with this Article:

(1) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which~~ that are owed to the contractor with whom the first tier subcontractor dealt and ~~which~~ that arise out of the improvement on which the first tier subcontractor worked or furnished materials.

(2) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which~~ that are owed to the first tier subcontractor with whom the second tier subcontractor dealt and ~~which~~ that arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of ~~his~~ the second tier subcontractor's lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the first tier subcontractor with whom ~~he~~ the second tier contractor dealt provided for in subdivision (1) of this section and shall be entitled to perfect it by notice of claim of lien upon funds to the extent of ~~his~~ the claim.

(3) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which~~ that are owed to the second tier subcontractor with whom the third tier subcontractor dealt and ~~which~~ that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of ~~his~~ the third tier subcontractor's lien upon funds provided in this subdivision, shall also be entitled to be subrogated to the lien upon funds of the second tier subcontractor with whom ~~he~~ the third tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is entitled to be subrogated thereto, and in either case shall be entitled to perfect the same by notice of claim of lien upon funds to the extent of ~~his~~ the claim.

(4) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds ~~which~~ that are owed to the person with whom they dealt and ~~which~~ that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.

(5) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of ~~his~~ having furnished labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A-20.

(6) A lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23.

"§ **44A-19. Notice ~~to obligor.~~of claim of lien upon funds.**

(a) Notice of a claim of lien upon funds shall set ~~forth:~~forth all of the following information:

(1) The name and address of the person claiming the ~~lien.~~lien upon funds.

(2) A general description of the real property ~~improved,~~improved.

(3) The name and address of the person with whom the lien claimant contracted to improve real ~~property,~~property.

(4) The name and address of each person against or through whom subrogation rights are ~~claimed,~~claimed.

(5) A general description of the contract and the person against whose interest the lien upon funds is ~~claimed, and~~claimed.

(6) The amount of the lien upon funds claimed by the lien claimant under ~~his~~ the contract.

(b) All notices of claims of liens upon funds by first, ~~second~~ second, or third tier subcontractors must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY
FIRST, ~~SECOND~~ SECOND, OR THIRD TIER SUBCONTRACTOR

To:

1. _____, owner of property involved.
(Name and address)
2. _____, general contractor.
(Name and address)
3. _____, first tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.
4. _____, second tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

General description of real property where labor performed or material furnished:

_____
_____
_____

General description of undersigned lien claimant's contract including the names of the parties thereto: _____
_____
_____

The amount of lien upon funds claimed pursuant to the above described contract:
$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated _____

_____, Lien Claimant

_____
(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:

_____, person holding funds against which lien upon funds is
(Name and Address)
claimed.
General description of real property where labor performed or material furnished:
_____
_____
_____
General description of undersigned lien claimant's contract including the names of the parties thereto: _____
_____
_____
The amount of lien upon funds claimed pursuant to the above described contract:
$ _____
The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.
Dated: _____

_____, Lien Claimant

_____
(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor ~~in person~~by personal delivery or ~~by certified mail~~ in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to ~~G.S. 44A-20(d).~~G.S. 44A-20(d) or G.S. 44A-23.

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to G.S. 44A-20(d) or G.S. 44A-23.

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A-12.1.

"§ **44A-20. Duties and liability of obligor.**

(a) Upon receipt of the notice of claim of lien upon funds provided for in this ~~Article~~ Article, the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds under this Article up to the total amount of such liens upon funds as to which ~~notice has~~ notices of claims of lien upon funds have been received.

(b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor ~~shall make~~makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons entitled to liens upon funds up to the amount of such wrongful payments, not exceeding the total claims with respect to which the notice of claim of lien upon funds was received prior to payment.

(c) If an obligor ~~shall make~~makes a payment after receipt of notice of claim of lien on funds and ~~incur~~ incurs personal liability ~~therefor,~~under subsection (b) of this section, the obligor shall be entitled to reimbursement and indemnification from the party receiving such payment.

(d) If the obligor is an owner of the property being improved, the lien claimant shall be entitled to a claim of lien upon real property upon the interest of the obligor in the real property to the extent of the owner's personal liability under ~~subsection (b),~~ subsection (b) of this section, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to G.S. 44A-12. The claim of lien on real property shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the obligor is personally liable for the debt under ~~subsection (b).~~subsection (b) of this section.

(e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor with the clerk of superior court in each county where the real property upon which the filed notice of claim of lien upon funds is located for the purpose of discharging the notice of claim of lien upon funds by any of the methods described in G.S. 44A-16.

(f) A bond deposited under this section to discharge a filed notice of claim of lien upon funds shall be effective to discharge any claim of lien on real property filed by the same lien claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of this section or G.S. 44A-23 claiming through or against the contractor or higher tier subcontractors up to the amount of the bond.

"§ **44A-21. Pro rata payments.**

(a) Where the obligor is a contractor or subcontractor and the funds in the hands of the obligor and the obligor's personal liability, if any, under G.S. 44A-20 are less than the amount of valid liens upon funds that have been received by the obligor under this Article, the parties entitled to liens upon funds shall share the funds on a pro rata basis.

~~In the event that~~ (b) Where the obligor is an owner and the funds in the hands of the obligor and the obligor's personal liability, if any, under G.S. 44A-20 are less than the sum of the amount of valid ~~lien~~ claims of liens upon funds that have been ~~filed with~~ received by the obligor under this Article and the amount of the valid claims of liens on real property upon the owner's property filed by the subcontractors with the clerk of superior court under G.S. 44A-23, the parties entitled to liens upon funds and the parties entitled to subrogation claims of liens on real property upon the owner's property shall share the funds on a pro rata basis.

"§ **44A-22. Priority of ~~liens.~~liens upon funds.**

Liens upon funds perfected under this Article have priority over all other interests or claims theretofore or thereafter created or suffered in the funds by the person against whose interest the lien upon funds is asserted, including, but not limited to, liens arising from garnishment, attachment, levy, judgment, assignments, security interests, and any other type of transfer, whether voluntary or involuntary. Any person who receives payment from an obligor in bad faith with knowledge of a ~~claim of~~ lien upon funds shall take such payment subject to the ~~claim of lien.~~lien upon funds.

"§ **44A-23. Contractor's ~~lien;~~ claim of lien on real property; perfection of subrogation rights of subcontractor.**

(a) First tier subcontractor. – A first tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of ~~his~~ this claim, enforce the claim of lien on real property of the contractor created by Part 1 of ~~Article 2 of this Chapter.~~this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice ~~and~~ of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

(b) Second or third subcontractor. –

(1) A second or third tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

a. The contractor, within 30 days following the date the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit and files in the office of the ~~Clerk of Superior Court~~clerk of superior court in each county wherein the real property to be improved is located, a completed and signed ~~Notice of Contract~~notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed ~~Notice of Subcontract~~notice of subcontract form by the same means of service as described in G.S. 44A-19(d); or

b. After the posting and filing of a signed ~~Notice of Contract~~notice of contract and the service upon the contractor of a signed ~~Notice of Subcontract,~~ notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of

service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the ~~Notice of Subcontract~~notice of subcontract form set forth herein.

(2) The form of the ~~Notice of Contract~~notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the ~~Clerk of Superior Court~~ clerk of superior court shall be the same as charged for filing a ~~Claim~~ claim of ~~Lien:~~ lien on real property:

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: _____

_____

"Contractor

"Filed this the _____ day of _____, _____.

_____

Clerk of Superior Court"

(3) The form of the ~~Notice of Subcontract~~notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property where the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated: _____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a ~~Claim of Lien~~claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice ~~and~~ of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 2. This act becomes effective October 1, 2005, and applies to claims of lien on real property filed and notices of claims of lien upon funds served on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 4:14 p.m. on the 27th day of July, 2005.

S.B. 421 **Session Law 2005-230**

AN ACT TO EXEMPT RADIO EMERGENCY ASSOCIATED COMMUNICATIONS TEAMS FROM THE LAW GOVERNING THE SOLICITATION OF CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131F-3(10) reads as rewritten:

"(10) A volunteer fire department, REACT (Radio Emergency Associated Communications Teams), rescue squad, or emergency medical service."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 7:31 a.m. on the 28th day of July, 2005.

S.B. 527 **Session Law 2005-231**

AN ACT TO ENHANCE THE CAPACITY OF PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO PROTECT THE SAFETY AND WELFARE OF THEIR STUDENTS, FACULTY, AND STAFF BY ENACTING THE CAMPUS POLICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 74G.**

"**Campus Police Act.**

"**§ 74G-1. Title.**

This Chapter is the "Campus Police Act" and may be cited by that name.

"§ **74G-2. Policy and scope.**

(a) The purpose of this Chapter is to protect the safety and welfare of students, faculty, and staff in institutions of higher education by fostering integrity, proficiency, and competence among campus police agencies and campus police officers. To achieve this purpose, the General Assembly finds that a Campus Police Program needs to be established. As part of the Campus Police Program, the Attorney General is given the authority to certify a private, nonprofit institution of higher education, other than those described by G.S. 116-15(d), as a campus police agency and to commission an individual as a campus police officer.

(b) The purpose of this Chapter is also to assure, to the extent consistent with the State and federal constitutions, that this protection is not denied to students, faculty, and staff at private, nonprofit institutions of higher education originally established by or affiliated with religious denominations. To achieve this purpose, the General Assembly finds that:

(1) Most of the State's private, nonprofit institutions of higher education were originally established by or affiliated with religious denominations;

(2) These institutions have made and continue to make significant contributions in education to the State and the nation;

(3) These institutions admit students regardless of their spiritual or religious beliefs;

(4) These institutions' principal mission is educational;

(5) All of these institutions are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and as such have independent governing boards of trustees;

(6) The principal State power conferred on campus police by this Chapter is the power of arrest;

(7) This power is important to protect the safety and welfare of students, faculty, and staff at these institutions;

(8) In exercising the power of arrest, these officers apply standards established by State and federal law only; and

(9) The exercise of this power is reviewable by the General Court of Justice and the federal courts.

(c) Public educational institutions operating under the authority of the Board of Governors of The University of North Carolina or the State Board of Community Colleges and private educational institutions that are licensed by the Board of Governors of The University of North Carolina pursuant to G.S. 116-15 or that are exempt from licensure by the Board of Governors pursuant to G.S. 116-15(c) may apply to the Attorney General to be certified as a campus police agency. A campus police agency may apply to the Attorney General to commission an individual designated by the agency to act as a campus police officer for the agency.

"§ **74G-3. Liability insurance policy or certificate of self-insurance required; suspension of campus police agency certification for failure to comply.**

(a) An applicant for certification as a campus police agency must file with the Attorney General either a copy of a liability insurance policy that meets the requirements of this section or a certificate of self-insurance designating assets sufficient to satisfy the coverage requirements of this section if the applicant is a nonpublic entity. The policy or certificate of self-insurance must provide not less than one million dollars ($1,000,000) of coverage per incident for personal injury or property

damage resulting from a negligent act of the applicant or an agent or employee of the applicant operating in the course and scope of employment or under color of law. The form, execution, and terms of a liability insurance policy must meet the requirements of the Attorney General.

(b) An insurance carrier that issues a liability insurance policy required by this section may cancel the policy upon giving 30 days' written notice to both the campus police agency and the Attorney General. The written notice must be given by certified mail, return receipt requested. Cancellation of a liability insurance policy does not affect any liability on the policy that accrued prior to the effective cancellation date.

(c) A campus police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a campus police agency that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance.

"**§ 74G-4. Powers of Attorney General.**

The Attorney General has the following powers in addition to those conferred elsewhere in this Chapter:

(1) To establish minimum education, experience, and training standards and establish and require written or oral examinations for an applicant for certification as a campus police agency, a certified campus police agency, an applicant for commission as a campus police officer, or a commissioned campus police officer.

(2) To require a campus police agency or a campus police officer to submit reports or other information.

(3) To inspect records maintained by a campus police agency.

(4) To conduct investigations regarding alleged violations of this Chapter or a rule adopted under this Chapter and to make evaluations as may be necessary to determine if a campus police agency or a campus police officer is complying with this Chapter or a rule adopted under this Chapter.

(5) To deny, suspend, or revoke a certification as a campus police agency or a commission as a campus police officer for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Campus Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Campus Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes.

"**§ 74G-5. Records.**

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Campus Police Program.

(b) Any papers, documents, or other records that become the property of the Campus Police Program and are placed in a campus police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b) of this section, the Attorney General may disclose the contents of any records maintained under the authority of this Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes.

"**§ 74G-6. Oaths, powers, and authority of campus police officers.**

(a) Requirements. – An individual who is commissioned as a campus police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a campus police officer. The person in each campus police agency who is responsible for the agency's campus police officers must be commissioned as a campus police officer.

(b) Powers and Authority of Officers. – Campus police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of the institution employing the officer.

(2) Any portion of any public road or highway passing through the real property described in subdivision (1) of this subsection or immediately adjoining it, wherever located.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivision (1) or (2) of this subsection.

In exercising the powers conferred by this subsection, campus police officers shall apply the standards established by the law of this State and the United States.

(c) Powers and Authority of Institutions. – The governing body of any private educational institution that has a campus police agency may:

(1) Enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted;

(2) Enter into joint agreements with the governing board of any county and, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted; and

(3) Enter into joint agreements with the governing board of any other public or private educational institution that has a campus police agency pursuant to this Chapter or pursuant to G.S. 116-40.5 to extend the law enforcement authority of its campus police officers into any or all of the other institution's jurisdiction and to determine the circumstances as to which its extension of authority may be granted.

(d) Concealed Weapons. – Campus police officers shall have, if duly authorized by their campus police agency and by the sheriff of the county in which the campus police agency is located, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(e) Public Institutions Option. – Notwithstanding any of the provisions of this Chapter, the board of trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes, and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a campus police agency and campus police commission pursuant to the provisions of this Chapter.

(f) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to campus police officers certified under this Chapter shall be limited to the provisions of this Chapter.

"**§ 74G-7. Badges, uniforms, weapons, and vehicles.**

Campus police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.

"**§ 74G-8. Minimum standards for campus police officers.**

Applicants for commission as a campus police officer and a commissioned campus police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.

"**§ 74G-9. Compensation of campus police officers.**

The compensation of a campus police officer shall be paid by the campus police agency for which the officer is commissioned, as may be agreed on between them.

"**§ 74G-10. Expiration, renewal, and termination of agency certification or officer commission.**

(a) Agency. – Unless sooner suspended or revoked by the Attorney General, a campus police agency's certification expires on June 30 of the calendar year following the date it is issued. A campus police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose campus police agency's certification was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for that certification for three years.

(b) Officer. – Unless sooner suspended or revoked by the Attorney General, a campus police officer's commission expires on June 30 of the calendar year following the date it is issued. A campus police officer may renew a commission upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. The Attorney General shall immediately revoke the commission of a campus police officer when any of the following occurs:

(1) Termination of employment with the campus police agency for which the officer is commissioned.

(2) Termination, suspension, or revocation of the certification of the campus police agency for which the officer is commissioned.

(3) Failure to meet in-service training requirements as required by this Chapter or the rules adopted under this Chapter.

(4) Violation of this Chapter or a rule adopted under this Chapter.

An individual whose campus police officer's commission was denied or revoked for a violation of this Chapter or a rule adopted under this Chapter is not eligible to apply again for a commission for three years.

"**§ 74G-11. Immunity.**

Neither the Attorney General nor any of the Attorney General's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of this Chapter or for the acts or omissions of agencies or officers certified or commissioned under this Chapter.

"**§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a campus police agency	$ 250.00
Annual renewal of certification as a campus police agency	$ 200.00
Application for reinstatement of certification as a campus police agency	$ 1,000
Application for commission as a campus police officer	$ 100.00
Annual renewal of commission as a campus police officer	$ 50.00
Application for reinstatement of commission as a campus police officer	$ 150.00

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter.

"**§ 74G-13. Penalties and enforcement.**

(a) No private person, firm, association, or corporation, and no public institution, agency, or other entity shall engage in, perform any services as, or in any way hold itself out as a campus police agency or engage in the recruitment or hiring of campus police officers without having first complied with the provisions of this Chapter. Any person, firm, association, or corporation or their agents and employees violating any of the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) The Campus Police Program may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of this Chapter or a rule adopted under this Chapter, and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed because of the violation. The venue for an action brought under this subsection shall be in any county selected by the Attorney General.

(c) This section does not relieve a campus police agency from any civil liability for the acts of its campus police officers in exercising or attempting to exercise the powers conferred by this Chapter."

SECTION 2. G.S. 74E-2(b) reads as rewritten:

"(b) A ~~public or private educational institution or~~ hospital, a State institution, or a corporation engaged in providing on-site police security personnel services for persons or property may apply to the Attorney General to be certified as a company police agency. A company police agency may apply to the Attorney General to commission an individual designated by the agency to act as a company police officer for the agency."

SECTION 3. G.S. 74E-6 reads as rewritten:

"§ **74E-6. Oaths, powers, and authority of company police officers.**

(a) Requirements. – An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. – The following three distinct classifications of company police officers are established:

(1) Campus Police Officers – Only ~~Those~~ those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by ~~G.S. 116-15.~~G.S. 116-15, and who are employed by a campus police agency that was licensed pursuant to this Chapter prior to the enactment of Chapter 74G of the General Statutes.

(2) Railroad Police Officers – Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers – All company police officers not designated as a campus police officer or railroad police officer.

(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5).

(d) Campus Police. – Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. – Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

~~(f) Campus Option. – Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.~~

(g) Exclusive Authority. – Notwithstanding any other provision of law, the authority granted to company police officers shall be limited to the provisions of this Chapter."

SECTION 4. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 5. G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, campus police, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

SECTION 6.1. G.S. 14-34.2 reads as rewritten:

"§ **14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.**

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other

deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

SECTION 6.2. G.S. 14-33(c) reads as rewritten:

"(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(1) Inflicts serious injury upon another person or uses a deadly weapon;

(2) Assaults a female, he being a male person at least 18 years of age;

(3) Assaults a child under the age of 12 years;

(4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties;

(5) Repealed by Session Laws 1999-105, s. 1, effective December 1, 1999; or

(6) Assaults a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as an employee or volunteer, or assaults a school employee or school volunteer as a result of the discharge or attempt to discharge that individual's duties as a school employee or school volunteer. For purposes of this subdivision, the following definitions shall apply:

a. "Duties" means:

1. All activities on school property;

2. All activities, wherever occurring, during a school authorized event or the accompanying of students to or from that event; and

3. All activities relating to the operation of school transportation.

b. "Employee" or "volunteer" means:

1. An employee of a local board of education; or a charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes;

2. An independent contractor or an employee of an independent contractor of a local board of education, charter school authorized under G.S. 115C-238.29D, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes, if the independent contractor carries out duties customarily performed by employees of the school; and

3. An adult who volunteers his or her services or presence at any school activity and is under the supervision of an individual listed in sub-sub-subdivision 1. or 2. of this sub-subdivision.

(7) Assaults a public transit operator, including a public employee or a private contractor employed as a public transit operator, when the operator is discharging or attempting to discharge his or her duties.

(8) Assaults a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes or a campus police officer certified pursuant to the provisions of Chapter 74G, Chapter 17C, or Chapter 116 of the General Statutes in the performance of that person's duties."

SECTION 7. G.S. 15A-402(f) reads as rewritten:

"(f) Campus Police Officers, Immediate and Continuous Flight. – A campus police officer: (i) appointed by a campus law-enforcement agency established pursuant to G.S. 116-40.5(a); (ii) appointed by a campus law enforcement agency established under G.S. 115D-21.1(a); or (iii) commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes and employed by a college or university which is licensed, or exempted from licensure, by G.S. 116-15 may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory."

SECTION 8. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E;~~74E or Chapter 74G of the General Statutes; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2)."

SECTION 9. G.S. 160A-288.2(d) reads as rewritten:

"(d) For the purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E.~~74E or Chapter 74G of the General Statutes."

SECTION 10. G.S. 14-401.6(a) reads as rewritten:

"§ **14-401.6. Unlawful to possess, etc., tear gas except for certain purposes.**

(a) It is unlawful for any person, firm, corporation or association to possess, use, store, sell, or transport within the State of North Carolina, any form of that type of gas generally known as "tear gas," or any container or device for holding or releasing that gas; except this section does not apply to the possession, use, storage, sale or transportation of that gas or any container or device for holding or releasing that gas:

…

(4) By or for security guards registered under Chapter 74C of the General ~~Statutes or~~ Statutes, company police officers commissioned under

Chapter 74E of the General Statutes, or campus police officers commissioned under Chapter 74G of the General Statutes provided they are on duty and have received training according to standards prescribed by the State Bureau of Investigation;

…."

SECTION 11. G.S. 20-37.6(f) reads as rewritten:

"(f) Penalties for Violation. –

…

(3) A law-enforcement officer, including a company police officer commissioned by the Attorney General under Chapter ~~74E,~~74E of the General Statutes, or a campus police officer commissioned by the Attorney General under Chapter 74G of the General Statutes, may cause a vehicle parked in violation of this section to be towed. The officer is a legal possessor as provided in G.S. 20-161(d)(2). The officer shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from a space pursuant to this section, except where the motor vehicle is willfully, maliciously, or negligently damaged in the removal from the space to a place of storage.

…."

SECTION 12. When this act becomes law, all certificates issued to police agencies at private institutions of higher education and commissions issued to their police officers pursuant to Chapter 74E of the General Statutes shall automatically convert to certification and commissions issued pursuant to this act and shall be administered in conformity with this act. Notwithstanding any of the provisions of Chapter 74G of the General Statutes, as enacted by this act, or the provisions of Chapter 74E of the General Statutes, the board of trustees of any educational institution that, on the effective date of this act, has a company police agency licensed pursuant to Chapter 74E of the General Statutes, may elect to continue to have its officers certified under Chapter 74E of the General Statutes rather than pursuant to Chapter 74G of the General Statutes, as enacted by this act, by making a written request to the Attorney General no later than October 1, 2005.

SECTION 13. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 7:40 a.m. on the 28th day of July, 2005.

S.B. 109 **Session Law 2005-232**

AN ACT TO GRANT TO DEPLOYED MILITARY PERSONNEL AN EXTENSION OF TIME WITHIN WHICH TO RENEW A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.10 reads as rewritten:

"§ **14-415.10. Definitions.**

The following definitions apply to this Article:

(1) Carry a concealed handgun. – The term includes possession of a concealed handgun.

(1a) Deployed or deployment. – Any military duty that removes a military permittee from the permittee's county of residence during which time the permittee's permit expires or will expire.

(2) Handgun. – A firearm that has a short stock and is designed to be held and fired by the use of a single hand.

(2a) Military permittee. – A person who holds a permit who is also a member of the armed forces of the United States, the armed forces reserves of the United States, the North Carolina Army National Guard, or the North Carolina Air National Guard.

(3) Permit. – A concealed handgun permit issued in accordance with the provisions of this Article.

(3a) Proof of deployment. – A copy of the military permittee's deployment orders or other written notification from the permittee's command indicating the start and end date of deployment and that orders the permittee to travel outside the permittee's county of residence.

(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm.

(5) Qualified sworn law enforcement officer. – A law enforcement officer employed by a local, State, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

SECTION 2. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.16A. Permit extensions and renewals for deployed military permittees.**

(a) A deployed military permittee whose permit will expire during the permittee's deployment, or the permittee's agent, may apply to the sheriff for an extension of the military permittee's permit by providing the sheriff with a copy of the permittee's proof of deployment. Upon receipt of the proof, the sheriff shall extend the permit for a period to end 90 days after the permittee's deployment is scheduled to end. A permit that has

been extended under this section shall be valid throughout the State during the period of its extension.

(b) A military permittee's permit that is not extended under subsection (a) of this section and that expires during deployment shall remain valid during the deployment and for 90 days after the end of the deployment as if the permit had not expired. The military permittee may carry a concealed handgun during this period provided the permittee meets all the requirements of G.S. 14-415.11(a).

(c) A military permittee under subsection (a) or subsection (b) of this section shall have 90 days after the end of the permittee's deployment to renew the permit. In addition to the requirements of G.S. 14-415.16, the permittee shall provide to the sheriff proof of deployment. The sheriff shall renew the permit upon receipt of this documentation provided the permittee otherwise remains qualified to hold a concealed handgun permit."

SECTION 3. G.S 14-415.11(a) reads as rewritten:

"(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer."

SECTION 4. G.S. 14-269(a1) reads as rewritten:

"(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(3) The deadly weapon is a handgun and the person is a military permittee as defined under G.S. 14-415.10(2a) who provides to the law enforcement officer proof of deployment as required under G.S. 14-415.11(a)."

SECTION 5. G.S. 14-269 is amended by adding a new subsection to read:

"(b2) It is a defense to a prosecution under this section that:

(1) The deadly weapon is a handgun;

(2) The defendant is a military permittee as defined under G.S. 14-415.10(2a); and

(3) The defendant provides to the court proof of deployment as defined under G.S. 14-415.10(3a)."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 8:01 a.m. on the 28th day of July, 2005.

S.B. 369 **Session Law 2005-233**

AN ACT TO AUTHORIZE FRANKLIN COUNTY AND THE CITIES OF EDEN AND REIDSVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE DURHAM AND ROCKINGHAM OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

PART I. FRANKLIN COUNTY OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Franklin County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

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

The following definitions apply in this Part:

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

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

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

SECTION 1.2. Franklin County Tourism Development Authority. – (a) Appointment and Membership. – When the Franklin County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the

members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Franklin County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

PART II. EDEN OCCUPANCY TAX.

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

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

SECTION 2.(c) Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Eden Account. Based on recommendations from and in consultation with the Eden City Council, the Authority shall use at least two-thirds of the funds in the Eden Account for tourism promotion and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Eden. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Eden.

The following definitions apply in this Part:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

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

PART III. REIDSVILLE OCCUPANCY TAX.

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

SECTION 3.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.(c) Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Reidsville Account. Based on recommendations from and in consultation with the Reidsville City Council, the Authority shall use at least two-thirds of the funds in the Reidsville Account for tourism promotion and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Reidsville. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Reidsville.

The following definitions apply in this Part:

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

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

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

PART IV. DURHAM OCCUPANCY TAX.

SECTION 4.1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~42-month~~54-month period.

If construction on the Performing Arts Theater has not begun within ~~42~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~42-month~~54-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~12~~54 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~24~~54 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 4.2. Section 9(e) of S.L. 2001-480, as amended by Section 4 of S.L. 2002-36, reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham Convention and Visitors Bureau as set out in Section 10 of this act. The Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts ~~Theater.~~Theater and for the design and engineering costs associated with the construction of the Theater. But no more than two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for design and engineering costs associated with the construction of the Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of

these funds that are not needed for this purpose shall be returned to the Bureau and used to promote travel and tourism.

(4) The Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

PART V. ROCKINGHAM COUNTY OCCUPANCY TAX.

SECTION 5. Chapter 322 of the 1991 Session Laws, as amended by Chapter 52 of the 1995 Session Laws, reads as rewritten:

"**Section 1.** Occupancy Tax. –

(a) Authorization and Scope. – The Rockingham County Board of Commissioners ~~may, by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto,~~ may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by ~~educational organizations, religious organizations, or summer camps.~~nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all~~

~~other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(e) Distribution and Use of Tax Revenue. – Rockingham County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Rockingham County Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the county through State, national, and international advertising and promotion. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Rockingham County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this Part:

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

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

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

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, may not be earlier than July 1, 1991, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Rockingham County Board of Commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"**Sec. 2.** Tourism Development Authority. –

(a) Appointment and Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control ~~Act and~~Act. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals currently active in the

promotion of travel and tourism in the county. The Authority shall be composed of the following 12 members:

(1) The Executive Director of the Rockingham County Economic Development Commission, who shall serve as an ex officio, nonvoting member.

(2) A county commissioner appointed by the Rockingham County Board of Commissioners, who shall serve as an ex officio, nonvoting member.

(3) Two owners or operators of hotels, motels, or other taxable accommodations and two individuals involved in tourist businesses who have demonstrated an interest in tourism development, appointed as follows: one by the Rockingham County Board of Commissioners and one by each chamber of commerce in Rockingham County.

(4) Five individuals involved in businesses or professions that are concerned with or affected by tourism development in such a way that their expertise would benefit the Authority, appointed as follows: one by each chamber of commerce in Rockingham County and two by the Rockingham County Board of Commissioners.

(5) The President of the Chinqua-Penn Foundation, Inc., who shall serve as an ex officio, nonvoting member.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term which they are appointed to fill. Except as provided in subsection (b) for initial members, members shall serve three-year terms. Members may serve no more than two consecutive terms. The members shall elect a chair from the membership of the Authority, who shall serve for a term of two years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Rockingham County shall be the ex officio finance officer of the Authority.

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

"**Sec. 2.(c)** Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"~~Sec. 3. Review of Levy and Authority.~~

~~Three years after the effective date of a tax levied under this act, the Rockingham County Board of Commissioners shall conduct a thorough review of the tax and the function of the Tourism Development Authority established under this act to determine the effectiveness of the levy and of the Authority.~~

"**Sec. 4.** This act is effective upon ratification."

PART VI. UNIFORM PROVISIONS.

SECTION 6.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland,

Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 6.2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART VII. EFFECTIVE DATE.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2005.

Became law on the date it was ratified.

H.B. 655 **Session Law 2005-234**

AN ACT TO REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; AND REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT.

The General Assembly of North Carolina enacts:

PART I. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 1.1. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~ Standards of Disclosure for Annuities and Life Insurance."

SECTION 1.2. Article 60 of Chapter 58 of the General Statutes is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 1.3. G.S. 58-60-1 reads as rewritten:

"§ **58-60-1. ~~Purpose of Article.~~ Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 1.4. G.S. 58-60-5 reads as rewritten:

"§ **58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~ Individual and group annuity contracts.

(2) Credit life ~~insurance,~~ insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~ (ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 1.5. G.S. 58-60-10 reads as rewritten:

"§ **58-60-10. Definitions.**

Unless the context of use indicates a different meaning, for the purposes of this ~~Article,~~ Part, the following definitions shall apply:

…."

SECTION 1.6. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 1.7. G.S. 58-60-20(a) reads as rewritten:

"(a) Each insurer subject to this ~~Article~~ Part shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this ~~Article.~~ Part. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use."

SECTION 1.8. G.S. 58-60-20(i) reads as rewritten:

"(i) For the purposes of this ~~Article,~~ Part, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium."

SECTION 1.9. G.S. 58-60-25 reads as rewritten:

"§ **58-60-25. Adoption of Buyer's Guide; requirements.**

Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance Solicitation Regulations shall be in compliance with the requirements of this ~~Article.~~ Part."

SECTION 1.10. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Regulation of Small Face Amount Life Insurance Solicitation.

"§ **58-60-90. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"§ **58-60-95. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"§ **58-60-100. Disclosure requirements.**

(a) An insurer issuing a small face amount policy where, over the term of the policy, the cumulative policy premiums paid may exceed the face amount of the policy, shall clearly and prominently disclose, on or before policy delivery, the length of time until the cumulative policy premiums paid may exceed the face amount of the policy.

(b) If an insurer is required to provide a disclosure under subsection (a) of this section, the insurer shall clearly and prominently disclose, on or before policy delivery, available premium payment plan and product alternatives. If no alternatives exist, the insurer shall clearly and prominently disclose that there are no such alternatives.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-105. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 1.11. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Annuity Solicitation.

"**§ 58-60-120. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-125. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund any of the following:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA).

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer.

c. A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Structured settlement annuities.

f. Charitable gift annuities.

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers, and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-130. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-140.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment.

"§ **58-60-135. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-140 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free-look period shall run concurrently with any other free-look period provided under State law or regulation.

"§ **58-60-140. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.
b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.
c. Periodic income options both on a guaranteed and nonguaranteed basis.
d. Any value reductions caused by withdrawals from or surrender of the contract.
e. How values in the contract can be accessed.
f. The death benefit, if available, and how it will be calculated.
g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.
h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.
(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"§ **58-60-145. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end dates of the current report period.
(2) The accumulation and cash-surrender value, if any, at the end of the previous report period and at the end of the current report period.
(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.
(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART II. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 2. G.S. 58-58-75 reads as rewritten:

"§ **58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage

or that coverage will be purchased. The notice shall be provided to the employee in connection with the application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART III. GROUP ANNUITY CONTRACTS

SECTION 3. G.S. 58-58-145 reads as rewritten:

"§ **58-58-145. Group annuity contracts defined; ~~requirements.~~ requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which ~~such~~ the contract is issued, ~~as herein provided,~~ is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of ~~such~~ the contract either wholly from the employer's funds or funds contributed by ~~him,~~ the employer, or partly from ~~such~~ the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder or to the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity contract, an individual certificate for each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART IV. EXPLANATION OF HEADINGS AND EFFECTIVE DATE

SECTION 4. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 5. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 2005.

Became law upon approval of the Governor at 2:00 p.m. on the 29th day of July, 2005.

S.B. 972 **Session Law 2005-235**

AN ACT TO CREATE THE CRIMINAL OFFENSE OF BREAKING OR ENTERING A BUILDING THAT IS A PLACE OF RELIGIOUS WORSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-54.1. Breaking or entering a building that is a place of religious worship.**

(a) Any person who wrongfully breaks or enters any building that is a place of religious worship with intent to commit any felony or larceny therein is guilty of a Class G felony.

(b) As used in this section, a 'building that is a place of religious worship' shall be construed to include any church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 2005.

Became law upon approval of the Governor at 2:01 p.m. on the 29th day of July, 2005.

H.B. 329 **Session Law 2005-236**

AN ACT TO LIMIT LIABILITY ARISING FROM CERTAIN AGRITOURISM ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Agritourism Activity Liability.

"**§ 99E-30. Definitions.**

As used in this Article, the following terms mean:

(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or

natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(2) Agritourism professional. – Any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) Inherent risks of agritourism activity. – Those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(4) Participant. – Any person, other than the agritourism professional, who engages in an agritourism activity.

(5) Person. – An individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

"§ **99E-31. Liability.**

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(1) Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.

(2) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

"§ **99E-32. Warning required.**

(a) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (b) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section must contain the following notice of warning:

'WARNING

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.'

(c) Failure to comply with the requirements concerning warning signs and notices provided in this subsection will prevent an agritourism professional from invoking the privileges of immunity provided by this Article."

SECTION 2. This act becomes effective January 1, 2006, and applies to agritourism activities, as defined in G.S. 99E-30 as enacted in Section 1 of this act, that occur on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 2:01 p.m. on the 29th day of July, 2005.

H.B. 896 **Session Law 2005-237**

AN ACT TO PROVIDE THE STATE BAR WITH AN APPEAL OF RIGHT FROM FINAL ORDERS OF THE DISCIPLINARY HEARING COMMISSION AND TO INCREASE THE MAXIMUM AMOUNT OF THE ANNUAL MEMBERSHIP FEES FOR MEMBERS OF THE STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-28(h) reads as rewritten:

"(h) There shall be an appeal of right by either party from any final order of the Disciplinary Hearing Commission ~~imposing admonition, reprimand, censure, suspension, stayed suspension, or disbarment upon an attorney, or involuntarily transferring a member of the North Carolina State Bar to disability inactive status~~ to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as

provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right."

SECTION 2. G.S. 84-34 reads as rewritten:

"§ **84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed ~~two hundred dollars ($200.00),~~ three hundred dollars ($300.00), and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 3. This act is effective when it becomes law and applies to final orders of the Disciplinary Hearing Commission issued on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 2005.

Became law upon approval of the Governor at 2:01 p.m. on the 29th day of July, 2005.

H.B. 1117 **Session Law 2005-238**

AN ACT TO MAKE CHANGES TO STATE AND LOCAL GOVERNMENT FINANCE LAWS AND TO AUTHORIZE PUBLIC HOSPITAL AUTHORITIES TO GRANT MORTGAGES TO FINANCE OR REFINANCE HOSPITAL FACILITIES AND EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.3(c) reads as rewritten:

"(c) Development Financing District. – A development financing district created pursuant to this section must be comprised of property that is one or more of the following:

(1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.

(2) Appropriate for rehabilitation or conservation activities.

(3) Appropriate for the economic development of the community.

The total land area within development financing districts in a unit, including development financing districts created pursuant to G.S. 160A-515.1, may not exceed five percent (5%) of the total land area of the unit. For the purposes of this section, land in a district created by a county that subsequently becomes part of a city, town, or incorporated village does not count against the five-percent (5%) limit for the city, town, or incorporated village unless the city, town, or incorporated village and the county have entered into an agreement pursuant to G.S. 159-107(e). A county may not include in a district created pursuant to this section any land that, at the time the district is created, is inside a city, town, or incorporated village."

SECTION 2. G.S. 159-29(a) reads as rewritten:

"(a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, not less than ~~ten thousand dollars ($10,000) nor more than two hundred fifty thousand dollars ($250,000).~~fifty thousand dollars ($50,000). The premium on the bond shall be paid by the local government or public authority."

SECTION 3. Article 4 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-68. Certain provisions not applicable to refunding bonds.**

The provisions of G.S. 159-56 and the provisions of this Article related to the holding of a public hearing prior to the adoption of the bond order do not apply to refunding bonds issued by a unit of local government so long as the refunding bonds do not extend the final maturity of the debt or obligation to be refunded and so long as the aggregate debt service over the life of the refunding bonds is less than the aggregate debt service on the debt or obligation to be refunded. When the conditions of this section are satisfied, a unit of local government may introduce a bond order, adopt a bond order, and adopt a sale resolution with respect to refunding bonds in one or more meetings of the unit's governing body."

SECTION 4. G.S. 159-83(a)(5) reads as rewritten:

"(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, ~~and~~ to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a

municipality, as the case may be, ~~but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner.~~and to pledge, mortgage, or grant a security interest in all or a portion of the real and personal property, whether owned or leased, comprising any revenue-producing utility or public service enterprise facilities or systems acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subdivision may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property. The granting of a lien on, or security interest in, hospital or health-related real or tangible personal property and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14."

SECTION 5. G.S. 159-107(e) reads as rewritten:

"(e) Increment Agreements. – Effect of Annexation on District Established by a County. – If a city annexes land in a development financing district established by a county pursuant to G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be paid to the city unless the city enters into an agreement with the county pursuant to this ~~subsection.~~subsection, and the annexed land in the county's district that subsequently becomes a part of the city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section. The city and the county may enter into an increment agreement under which the city agrees that city taxes on part or all of the incremental valuation in the district shall be paid into the revenue increment fund for the district. An increment agreement may be entered into when the district is established or at any time after the district is established. The increment agreement may extend for the duration of the district or for a shorter time agreed to by the parties."

SECTION 6. G.S. 159-111(b) reads as rewritten:

"(b) In order to provide additional security for debt instruments issued pursuant to this Article, and in lieu of pledging its faith and credit for that purpose pursuant to subsection (a) of this section, a unit of local government may ~~agree to apply to the payment of the instruments~~pledge or grant a security interest in any available sources of revenues of the unit, including special assessments against property within the development financing district made by the unit pursuant to Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, as long as ~~the agreement to use the sources to make payment~~doing so does not constitute a pledge of the unit's taxing ~~power or of the unit's revenues derived from local sales taxes.~~power. In addition, to the extent the generation of the revenues is within the power of the unit, the unit may enter into covenants to take action in order to generate the revenues, as long as the covenant does not constitute a pledge of the unit's taxing power. In addition, the unit may pledge, mortgage, or grant a security interest in all or a portion of the real and personal property being financed or improved with the proceeds of the project development financing debt instrument. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property."

SECTION 7. G.S. 159-125 reads as rewritten:

"§ **159-125. Bid instructions; bid deposit.**

(a) Except for revenue bonds, no bid for less than the ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained.

Different rates of interest may be bid for bonds maturing in different ~~years, but~~ years, and different rates of interest may ~~not~~ be bid for bonds maturing in the same ~~year.~~year unless the Secretary of the Commission requires one interest rate per maturity in connection with the sale of the bonds. This subsection applies to public sale of bonds only.

(b) ~~Each bid shall be~~ The Secretary of the Commission may require that bids be accompanied by a bid deposit ~~equal to two percent (2%) of the aggregate principal amount of the bond issue. The~~ in an amount prescribed by the Secretary of the Commission or may determine that no bid deposit is required. If required, the bid deposit shall be made in a form approved by the Secretary of the Commission, and shall secure the issuing unit against loss resulting from the bidder's failure to comply with the terms of the bid. ~~his bid. This subsection shall not apply to bids entered by a State or federal agency.~~

(c) When a State or federal agency has agreed to purchase the bonds at a stated rate of interest unless more favorable bids are received, bids may be entertained from other purchasers for less than all of the bonds."

SECTION 8. G.S. 159-127 reads as rewritten:

"§ **159-127. Award of bonds.**

All bids received pursuant to a public sale shall be opened in public on a date and at a time and place to be specified in the notice of sale. ~~The bond~~ Bonds sold at public sale shall be awarded to the bidder offering to purchase the bonds at the lowest interest cost to the issuing ~~unit. In calculating such interest cost, the amount of any premium bid shall be deducted from the aggregate amount of interest on the entire issue until maturity.~~unit calculated in the manner established by the Secretary of the Commission in the notice of sale."

SECTION 9. G.S. 159-139 reads as rewritten:

"§ **159-139. Destruction of cancelled bonds, notes, and coupons.**

(a) All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

(1) Method 1. – The finance officer shall make an entry in ~~a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes, and coupons, showing~~the official records of the unit, which may include the register for the bonds, notes, and coupons, showing:

a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.

b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed or marked cancelled in the manner determined by the finance officer, who shall make an entry of the destruction or

cancellation in the official records of the unit. ~~by either burning or shredding, in the presence of the mayor or chairman of the governing board, the finance officer, the unit's attorney, and the clerk to the governing board, or any three of them, each of whom shall certify under his hand in the book kept by the finance officer that he saw the bonds and coupons destroyed.~~ Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. – The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

(b) The provisions of G.S. 121-5 and G.S. 132-3 ~~shall~~ do not apply to paid bonds, notes, and coupons. The information required to be ~~entered in a substantially bound book~~ recorded prior to destruction under either Method 1 or Method 2 may as an alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents."

SECTION 10. G.S. 159C-3(15a) reads as rewritten:

"§ **159C-3. Definitions.**

The following definitions apply in this Chapter:

…

(15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:

a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.

c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.

e. Public auditoriums, gymnasiums, stadiums, and convention centers.

f. Recreational ~~facilities.~~facilities, including museums.

g. Land, equipment, and facilities for the disposal, treatment, or recycling of solid or other waste that are described in G.S. 159I-8.

h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged. The term does not include a retail facility, however, unless the proposed operator of the facility certifies that at least seventy-five percent (75%) of its employees will be disadvantaged or disabled persons and at least seventy-five percent (75%) of its inventory will be composed of used, donated items and items manufactured by disadvantaged or disabled persons.

i. Orphanages and similar housing facilities for children or disadvantaged or disabled persons."

SECTION 11. G.S. 159G-18(a) reads as rewritten:

"(a) Applicants may execute debt instruments payable to the State in order to obtain revolving loans provided for in this Chapter. Applicants shall pledge as security for such obligations the user fee revenues derived from operation of the benefited facilities or systems ~~only,~~only; or other sources of ~~revenue,~~revenue; or their faith and ~~credit,~~credit; or a mortgage, deed of trust, security interest, or similar lien on all or a portion of the real and personal property comprising the utility or public enterprise facility or system acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing; or any combination thereof. The faith and credit of applicants that are local government units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use by applicants under this Chapter. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments by applicants to the State without any public bidding therefor."

SECTION 12. G.S. 160A-515.1(b) reads as rewritten:

"(b) Development Financing District. – A development financing district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within development financing districts in a city, including development financing districts created pursuant to G.S. 158-7.3, may not exceed five percent (5%) of the total land area of the city. For purposes of this section, land in a district created by a county that subsequently becomes part of a city does not count against the city's five-percent (5%) limit unless the city and the county have entered into an agreement pursuant to G.S. 159-107(e)."

SECTION 13. G.S. 131A-3 reads as rewritten:

"§ **131A-3. Definitions.**

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

…

(5) "Non-profit agency" means any nonprofit ~~private~~ corporation existing or hereafter created and empowered to acquire, by lease or otherwise, operate or maintain health care facilities;

…

(9) "Federally insured mortgage note" means any loan secured by a mortgage or deed of trust on any health care facilities owned or leased by any public or nonprofit agency which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of

principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage or a deed of trust.

…."

SECTION 14. G.S. 131A-6 reads as rewritten:

"§ **131A-6. Additional powers of public agencies.**

For the purposes of this Chapter, public agencies are authorized and empowered to enter into contracts and agreements, including loan agreements and agreements of sale or lease, with the Commission to facilitate the financing or refinancing, acquiring, constructing, equipping, providing, operating and maintaining of health care facilities and pursuant to any such loan agreement or agreement of sale or lease to operate, repair and maintain any health care facilities and, subject to the provisions of G.S. 131A-8, to pay the cost thereof and the loan repayments, purchase price payments or rent therefor from any funds available for such purposes. In addition, public agencies may mortgage, pledge, assign, grant a security interest in, or otherwise encumber a health care facility, whether owned or leased, to secure obligations under a loan agreement or similar debt instrument in connection with the issuance of bonds or notes by the Commission under this Chapter. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this section may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property. The granting of a lien on, or security interest in, a health care facility and the conveyance of this property pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14."

SECTION 15. The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 17. This act becomes effective August 1, 2005.

In the General Assembly read three times and ratified this the 21st day of July, 2005.

Became law upon approval of the Governor at 2:02 p.m. on the 29th day of July, 2005.

S.B. 482 **Session Law 2005-239**

AN ACT TO EXEMPT LARGE INDOOR ARENAS WITH SEATING CAPACITIES GREATER THAN TWENTY-THREE THOUSAND FROM SMOKING REGULATIONS PROVIDED FOR IN ARTICLE 64 OF CHAPTER 143 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599 reads as rewritten:

"§ **143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or child care center, except for a teacher's lounge.
(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
(5) Local health department.
(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
(7) Tobacco manufacturing, processing, and administrative facilities.
(8) Indoor arenas with a seating capacity greater than 23,000."

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

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 2:09 p.m. on the 29th day of July, 2005.

S.B. 707 Session Law 2005-240

AN ACT TO CLARIFY THAT THE THIRTY-DAY DEADLINES IMPOSED UPON AGENTS AND BAIL BONDSMEN SEEKING INTERNAL ADMINISTRATIVE REVIEW OF A DENIAL OF LICENSURE AND SUBSEQUENTLY SEEKING A HEARING UNDER ARTICLE 3A OF CHAPTER 150B OF THE GENERAL STATUTES ARE MANDATORY, NOT OPTIONAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-30(g) reads as rewritten:

"(g) Denial of License. – If the Commissioner finds that the applicant has not fully met the requirements for licensing, ~~he~~ the Commissioner shall refuse to issue the license and shall notify in writing the applicant and the appointing insurer, if any, of ~~such~~ the denial, stating the grounds ~~therefor.~~ for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-33-46. ~~Within 30 days after service of the notification, the applicant may~~ In order for an applicant to be entitled to a review of the Commissioner's action to determine the reasonableness of the action, the applicant must make a written demand upon the Commissioner for a review ~~to determine the reasonableness of the Commissioner's action.~~ no later than 30 days after service of the notification upon the applicant. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing ~~as to the~~ of the outcome of the review. ~~Within 30 days after service of the notification as to the outcome, the applicant may~~ In order for an applicant who disagrees with the outcome of the review to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the applicant must make a written demand upon the Commissioner for a hearing ~~under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~ no later than 30 days after service upon the applicant of the notification of the outcome."

SECTION 2. G.S. 58-71-85(b) reads as rewritten:

"(b) Whenever the Commissioner denies an initial application for a license or an application for a reissuance of a license, ~~he~~ the Commissioner shall notify the applicant and advise, in writing, the applicant of the reasons for the denial of the license. The

application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-71-80(a). ~~Within 30 days after service of the notification, the applicant may~~ In order for an applicant to be entitled to a review of the Commissioner's action to determine the reasonableness of the action, the applicant must make a written demand upon the Commissioner for a review ~~to determine the reasonableness of the Commissioner's action.~~ no later than 30 days after service of the notification upon the applicant. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing ~~as to~~ of the outcome of the review. ~~Within 30 days after service of the notification as to the outcome, the applicant may~~ In order for an applicant who disagrees with the outcome of the review to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the applicant must make a written demand upon the Commissioner for a hearing ~~under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~ no later than 30 days after service upon the applicant of the notification of the outcome."

SECTION 3. Article 71 of Chapter 58 of the General Statutes is amended by adding the following new section:

"**§ 58-71-151. Securities held in trust by Commissioner; authority to dispose of same.**

The securities deposited by a professional bondsman with the Commissioner shall be held in trust for the protection and benefit of the holder of bail bonds executed by or on behalf of the undersigned bondsman in this State. Notwithstanding any other provision of law, the Commissioner is authorized to select a bank or trust company as master trustee to hold cash securities to be pledged to the State when deposited with the Commissioner pursuant to statute. Securities may be held by the master trustee in any form that in fact perfects the security interest of the State in the securities. The Commissioner shall by rule establish the manner in which the master trust shall operate. The master trustee may charge the person making the deposit reasonable fees for services rendered in connection with the operation of the trust, and the assets of the account may be used to pay such charges.

A pro rata portion of the securities shall be returned to the bondsman when the Commissioner is satisfied that the deposit of securities is in excess of the amount required to be maintained with the Commissioner by said bondsman; and all the securities shall be returned if the Commissioner is satisfied that the bondsman has satisfied, or satisfactory arrangements have been made to satisfy, the obligations of the bondsman on all the bondsman's bail bonds written in the State.

The Commissioner may sell or transfer any and all of said securities or utilize the proceeds thereof for the purpose of satisfying the liabilities of the professional bondsman on bail bonds given in this State on which the bondsman is liable."

SECTION 4. G.S. 58-71-150 is repealed.

SECTION 5. This act becomes effective October 1, 2005. This act applies to all notices of applications denied by the Commissioner served on or after that date and to all notices of review outcomes served on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 2:12 p.m. on the 29th day of July, 2005.

H.B. 1004 **Session Law 2005-241**

AN ACT TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT AND THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM; TO ALTER THE MANNER IN WHICH ENTERPRISE TIERS ARE DESIGNATED; TO AMEND THE HEALTH INSURANCE REQUIREMENTS FOR THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM; AND TO CREATE AN ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE TO PERFORM A COMPREHENSIVE STUDY OF THE ECONOMIC DEVELOPMENT INCENTIVES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-129.2A(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2006.~~2008."

SECTION 1.(b) G.S. 105-129.2A, as amended by subsection (a) of this section, is amended by adding a new subsection to read:

"(a3) Sunset for Certain Taxpayers Located in Development Zones. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that satisfies all of the conditions of this subsection, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce describing a proposed new or expanding project and specifying the amount to be invested in real property and machinery and equipment, the number of new jobs to be created, and a proposed timetable for making the investment and creating the jobs.

(2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in an eligible business at a location within a development zone within a three-year period at least ten million dollars ($10,000,000) of real property and machinery and equipment and that the taxpayer will create at least 300 new jobs at the location within a three-year period beginning when the property is first placed in service in an eligible business.

(3) Before January 1, 2006, the taxpayer places at least four million dollars ($4,000,000) of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location."

SECTION 2. G.S. 105-129.4(d) reads as rewritten:

"(d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to timely make the required level of investment under subsection (b1) of this section. If an eligible major industry fails to timely make the required level of investment under G.S. 105-129.2(8a), the taxpayer forfeits all credits allowed under this Article that it would not otherwise have been eligible for if it were not an eligible major industry. If a taxpayer that is subject to the later repeal date of this Article under G.S. 105-129.2A(a3) fails to timely make the required level of investment or to timely create the required number of new jobs, the taxpayer forfeits all credits allowed under this Article that it would not

otherwise have been eligible for if it were not subject to the later repeal date under G.S. 105-129.2A(a3). A taxpayer forfeits the credit for substantial investment in other property allowed under G.S. 105-129.12A if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under subsection (b5) of this section. A taxpayer forfeits the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer fails to make the level of investment required by subsection (e) of that section within the required period or if the taxpayer fails to meet the terms of its licensing agreement with a research university. If a taxpayer claimed a twenty percent (20%) technology commercialization credit under G.S. 105-129.9A(d) and fails to make the level of investment required under that subsection within the required period, but does make the level of investment required under subsection (e) of that section within the required period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs, the technology commercialization credit, or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the technology commercialization credit or the credit for investing in machinery and equipment was claimed."

SECTION 3. G.S. 143B-437.62 reads as rewritten:

"§ **143B-437.62. Expiration.**

The authority of the Committee to enter into new agreements expires January 1, ~~2006.~~2008."

SECTION 4. G.S. 105-129.3 is amended by adding a new subsection to read:

"(f) Exceptions for Certain Counties with High Unemployment. – Notwithstanding the provisions of this section, a county whose rank in a ranking of counties by average rate of unemployment for the preceding 12 months, from highest to lowest, is one of the 10 highest in the State is designated an enterprise tier one area."

SECTION 5. G.S. 143B-437.53(c) reads as rewritten:

"(c) Health Insurance. – A business is eligible for a grant under this Part only if the business provides health insurance for all of the applicable full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, an applicable full-time employee is one who earns from the business less than one hundred fifty thousand dollars ($150,000) in taxable compensation on an annualized basis or three and one-half times the annualized average State wage for all insured private employers in the State employing between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance, as required by this subsection, for all applicable

full-time employees of the project with respect to which the grant is made. If the business ceases to provide the required health ~~insurance to all full-time employees of the project with respect to which a grant is made,~~insurance, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59."

SECTION 6. G.S. 105-129.3(e)(1) reads as rewritten:

"(e) Exceptions for Certain Small Counties. – The following exceptions to the provisions of this section apply to small counties:

(1) A county that ~~meets both of the conditions set out below~~ has a population of less than 12,000 is designated an enterprise tier one area.~~area:~~

~~a. Its population is less than 12,000.~~

~~b. More than sixteen percent (16%) of its population is below the federal poverty level according to the most recent federal decennial census.~~"

SECTION 7. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 12O.

"Joint Legislative Economic Development Oversight Committee.

"**§ 120-70.130. Creation and membership of Joint Legislative Economic Development Oversight Committee.**

The Joint Legislative Economic Development Oversight Committee is established. The Committee consists of 12 members as follows:

(1) Six members of the Senate appointed by the President Pro Tempore of the Senate; and

(2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2007 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment.

"**§ 120-70.131. Purpose and powers of Committee.**

(a) The Joint Legislative Economic Development Oversight Committee shall examine, on a continuing basis, economic growth and development issues and strategies in North Carolina in order to make ongoing recommendations to the General Assembly on ways to promote cost-effective economic development initiatives. In this examination, the Committee may:

(1) Study the budgets, programs, and policies of the Department of Commerce, the North Carolina Partnership for Economic Development, and other State, regional, and local entities involved in economic development.

(2) Analyze legislation from other states regarding economic development.

(3) Analyze proposals produced by the Economic Development Board.

(4) Study any other matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"**§ 120-70.132. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Economic Development Oversight Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is seven members. Only recommendations, including proposed legislation, receiving at least six affirmative votes may be included in a Committee report to the General Assembly. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The cochairs of the Committee may call upon other knowledgeable persons or experts to assist the Committee in its work.

(d) Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

SECTION 8. The Economic Development Oversight Committee, created pursuant to Section 7 of this act, shall complete a comprehensive study of Article 3A of Chapter 105 of the General Statutes (the Bill Lee Act) and the Job Development Investment Grant Program (JDIG) established under Part 2G of Article 10 of Chapter 143B of the General Statutes. Before adopting a report on this issue, the Economic Development Oversight Committee must hold at least one joint meeting with the Revenue Laws Study Committee. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly, along with any recommendations or legislative proposals, before the beginning of the 2006 Regular Session of the 2005 General Assembly. The study shall focus on comprehensive reform of the Bill Lee Act, JDIG, and related economic development incentives. It is the intent of the General Assembly to replace the current Bill Lee Act beginning with the 2007 taxable year with a program recommended by the Committee and to revamp JDIG based on the Committee's recommendations.

SECTION 9. This act is effective when it becomes law. Sections 4 and 6 of this act apply to designations made on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2005.

Became law upon approval of the Governor at 2:15 p.m. on the 29th day of July, 2005.

H.B. 1236 **Session Law 2005-242**

AN ACT TO REPLACE THE ALLIANCE OF AMERICAN INSURERS AND NATIONAL ASSOCIATION OF INDEPENDENT INSURERS WITH THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA AND ONE INSURER FROM THE INDUSTRY AT LARGE SELECTED BY THE INSURER COMPANY MEMBERS OF THE BOARD AS TRADE ASSOCIATION MEMBERS WHICH MUST BE REPRESENTED ON THE BOARD OF GOVERNORS OF THE NORTH CAROLINA REINSURANCE FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-35(d) reads as rewritten:

"(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of 12 members having one vote each from the classifications specified in this subsection and the Commissioner, who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the ~~following trade associations:~~ following: the American Insurance Association (or its successors), ~~the Alliance of American Insurers (or its successors), the National Association of Independent Insurers (or its successors),~~ the Property Casualty Insurers Association of America (or its successors), stock insurers not affiliated with those trade associations, nonstock insurers not affiliated with those trade associations, and the industry at large regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. ~~all other stock insurers not affiliated with those trade associations, and all other nonstock insurers not affiliated with those trade associations.~~ The Commissioner shall appoint two members of the Board who are Facility insurance company members domiciled in this State. The Commissioner shall appoint five members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The ~~initial~~ term of office of the Board members shall be ~~two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve~~ three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the classifications specified in this subsection until the vacancies are filled in accordance with this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department and who are appointed by the Governor to serve at the Governor's pleasure."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 2:15 p.m. on the 29th day of July, 2005.

S.B. 1118 **Session Law 2005-243**

AN ACT TO PERMIT CERTAIN CLAIMS UNDER THE TORT CLAIMS ACT WHEN THE STATE REFUSED TO DEFEND A CIVIL ACTION BROUGHT AGAINST A STATE LAW ENFORCEMENT OFFICER ON THE GROUNDS THAT THE OFFICER DID NOT ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT, AND A COURT SUBSEQUENTLY DETERMINED THAT THE OFFICER DID ACT WITHIN THE SCOPE AND COURSE OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-299, where a judgment was entered in a civil action in federal court prior to the effective date of this act against a member of the Highway Patrol for an injury to a person and where the court that rendered the judgment concluded that the person's injury was the result of an act of the member of the Highway Patrol committed while acting within the course and scope of the officer's employment, the person who brought the action has 180 days from the effective date of this act to file an action to recover damages under Article 31 of Chapter 143 of the General Statutes. It shall not be a defense that the member of the Highway Patrol is no longer a State employee, or that any time limit for seeking the recovery of damages or any other time limit of civil procedure has expired. The limitation on the amount that may be recovered under this section shall be the limit of liability under Article 31 of Chapter 143 of the General Statutes applicable at the time the tort occurred. No interest on the amount recoverable shall accrue until an amount of damages is awarded under Article 31 of Chapter 143 of the General Statutes as authorized by this section.

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

In the General Assembly read three times and ratified this the 18th day of July, 2005.

Became law upon approval of the Governor at 2:31 p.m. on the 29th day of July, 2005.

S.B. 461 **Session Law 2005-244**

AN ACT TO AMEND THE LAW RELATING TO UNITRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 37A-1-104.1(5) reads as rewritten:

"(5) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the ~~trustee. Notwithstanding the foregoing, no trust that may be subject to taxation under section 2001 or section 2501 of the Code shall be an income trust for purposes of this Part, until the expiration of the period for filing the return therefor, including all extensions for the filing.~~ trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons."

SECTION 2. G.S. 37A-1-104.1 is amended by adding a new subdivision to read:

"(9a) "Treasury regulations" means the regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time."

SECTION 3. G.S. 37A-1-104.2 reads as rewritten:

"§ **37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(2) The trustee sends written notice of its intention to take the action, along with copies of the written policy and this Part, to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the ~~notice (without regard to the exercise of any power of appointment)~~ notice, and ~~(iv)~~ (v) all persons acting as advisor or protector of the trust;

(3) ~~There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice;~~ There is at least one competent beneficiary described in subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this subsection and one competent beneficiary described in subdivision (2)(iv) of this subsection; and

(4) No person receiving notice of the trustee's intention to take the proposed action ~~of the trustee~~ objects to the action within 60 days of receipt of the notice by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a

majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust amount;

(3) The trustee sends written notice of its intention to take the action, along with copies of the written policy and this Part, and the determinations of the disinterested person to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the ~~notice (without regard to the exercise of any power of appointment)~~ notice, and ~~(iv)~~ (v) all persons acting as advisor or protector of the trust;

(4) ~~There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice;~~ There is at least one competent beneficiary described in subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this subsection and one competent beneficiary described in subdivision (3)(iv) of this subsection; and

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days of receipt of the notice by written instrument delivered to the trustee.

(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable

purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

(1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions (2) and (3) of subsection (b) of this section, as the case may be, the trustee shall send written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of the income, to the Attorney General of this State;

(2) Subdivision (4) of subsection (a) of this section or subdivision (4) of subsection (b) of this section, as the case may be, shall not apply to this action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code."

SECTION 4. G.S. 37A-1-104.4 reads as rewritten:

"§ **37A-1-104.4. Determination of unitrust amount.**

(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. ~~These assets may be excluded from valuation, provided all income received with respect to these assets is distributed to the extent distributable in accordance with the terms of the governing instrument.~~ Assets, such as a residence or tangible personal property, used by the trust beneficiary also may be excluded from the fair market value for computing the unitrust amount.

(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

~~(c) In the case of a trust (i) for which a marital deduction has been taken for federal tax purposes under section 2056 or section 2523 of the Code (during the lifetime of the spouse for whom the trust was created) or (ii) a trust to which the generation-skipping transfer tax due under section 2601 of the Code does not apply by reason of any effective date or transition rule, the unitrust amount in any taxable year shall not be less than the net income of the trust, determined without regard to subsection (d) of this section.~~

(d) Following the conversion of an income trust to a total return unitrust, the trustee:

~~(1) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and~~

~~(2) May allocate to trust income for each taxable year of the trust (or portion of that year) (i) net short-term capital gain described in section 1222(5) of the Code for that year or portion of that year, but only to~~

~~the extent that the amount allocated together with all other amounts allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year; and (ii) net long-term capital gain described in section 1222(7) of the Code for that year or portion of that year, but only to the extent that the amount allocated together with all other amounts, including amounts described in clause (i) above, allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year.~~

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) May, in the trustee's discretion, consider the unitrust amount as paid from net short-term gain described in section 1222(5) of the Code and then from net long-term capital gain described in section 1222(7) of the Code so long as the discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in section 643(a) of the Code without regard to section 1.643(a)-3(b) of the Treasury Regulations, as amended from time to time; and

(4) Shall then consider the unitrust amount as coming from the principal of the trust."

SECTION 5. G.S. 37A-1-104.9 reads as rewritten:

"§ **37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the grantor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) ~~one or more persons to whom the trustee could distribute income has a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or section 2514 of the Code, or the power of withdrawal can be exercised to discharge a duty of support the person possesses, or~~ the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this ~~Part.~~ Part, or expressly states the grantor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that 'the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust.' or 'the trustee shall not determine the distributions to the income beneficiary as a unitrust amount.' or similar words reflecting that intent is sufficient to preclude the use of this Part."

SECTION 6. Chapter 37A of the General Statutes is amended by adding a new Part to read:

"Part 2A. Express Total Return Unitrusts.

"§ **37A-1-104A.1. Definitions.**

(a) An "express total return unitrust" means a trust that has a governing instrument requiring the distribution at least annually of a unitrust amount equal to a fixed percentage of not less than three percent (3%) nor more than five percent (5%) per year of the net fair market value of the trust's assets, valued at least annually.

(b) "Code" means the Internal Revenue Code as described in G.S. 37A-1-104.1(1).

(c) "Treasury regulations" means the treasury regulations described in G.S. 37A-1-104.1(9a).

"**§ 37A-1-104A.2. Determination of unitrust amount.**

(a) The unitrust amount to be distributed by the express total return unitrust may be determined in the governing instrument by reference to the net fair market value of the trust's assets determined annually or averaged on a multiple year basis.

(b) The terms of the governing instrument of an express total return unitrust may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods that the trustee considers reasonable and appropriate.

(2) Assets, such as a residence property or tangible personal property, used by the trust beneficiary entitled to the unitrust amount may be excluded from the net fair market value for computing the unitrust amount.

"**§ 37A-1-104A.3. Effect of distribution of unitrust amount.**

The distribution from an express total return unitrust of the fixed percentage of not less than three percent (3%) nor more than five percent (5%) reasonably apportions between the income beneficiaries and remaindermen the total return of an express total return unitrust.

"**§ 37A-1-104A.4. Change or conversion of unitrust amount.**

(a) The terms of the governing instrument of an express total return unitrust may provide the method similar to the method provided under G.S. 37A-1-104.2(a) for changing the unitrust percentage or for converting from a unitrust to an income trust or for a reconversion of an income trust to a unitrust, or for all of these actions.

(b) If the terms of the governing instrument of an express total return unitrust do not specifically or by reference to G.S. 37A-1-104.2 grant a power to the trustee to change the unitrust percentage or change to an income trust, the trustee shall not have that power.

"**§ 37A-1-104A.5. Determination of character of unitrust amount.**

Unless the terms of the governing instrument of the express total return unitrust specifically provide otherwise, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) May, in the trustee's discretion, consider the unitrust amount as paid from net short-term gain described in section 1222(5) of the Code and then from net long-term capital gain described in section 1222(7) of the Code so long as this discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in

section 643(a) of the Code without regard to section 1.643(a)-3(b) of the treasury regulations; and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

"§ **37A-104A.6. Unitrust amount in excess of a five percent payout.**

A trust that provides for a fixed percentage payout in excess of five percent (5%) per year is considered an express total return unitrust that pays out a fixed percentage of five percent (5%) per year and pays out principal to the extent that the fixed percentage payout exceeds five percent (5%) per year."

SECTION 7. This act is effective when it becomes law and applies to every trust or decedent's estate existing on that date or coming into existence after that date, except as otherwise expressly provided in the will or terms of the trust or in the provisions of Chapter 37A of the General Statutes. G.S. 37A-1-104.9(iii), as rewritten in Section 5 of this act, applies retroactively to October 1, 2004, and applies to every trust or decedent's estate existing on that date or coming into existence after that date, except as otherwise expressly provided in the will or terms of the trust or in the provisions of Chapter 37A of the General Statutes.

In the General Assembly read three times and ratified this the 21st day of July, 2005.

Became law upon approval of the Governor at 9:18 a.m. on the 30th day of July, 2005.

S.B. 420 **Session Law 2005-245**

AN ACT TO ALLOW THE TOWN OF OAK RIDGE TO MAKE VOLUNTARY ANNEXATIONS WITHIN A CERTAIN DESCRIBED AREA AND TO ALLOW THE TOWN OF RED CROSS TO AMEND ITS BUDGET ORDINANCES FOR THE 2002-2003 FISCAL YEAR TO SHOW CONFORMANCE WITH G.S. 136-41.2.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, reads as rewritten:

"Section 1.2. (a) Except as provided by subsection (c) of this section, Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2018.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge.

(c) Parts 1 and 4 of Article 4A of Chapter 160A of the General Statutes apply to the Town of Oak Ridge as to the following described territory in Guilford County:

Beginning at a point located at the intersection of Haw River Road and the Forsyth/Guilford County line; thence following the Forsyth/Guilford County line north to the point at which the Forsyth/Guilford County line intersects with the corporate limits of the Town of Stokesdale; thence continuing in an easterly and southeasterly direction following the Town of Stokesdale corporate limits to Haw River Road at which point the Town of Oak Ridge corporate limits begin; thence continuing southwesterly along the southern right-of-way of Haw River Road to the point and place of beginning."

SECTION 2. The Town of Red Cross shall be considered to have complied with the provisions of G.S. 136-41.2 for the fiscal year 2002-2003 and is excused from nonconformity with respect to implementation of the four specified services.

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

In the General Assembly read three times and ratified this the 1st day of August, 2005.

Became law on the date it was ratified.

S.B. 191 **Session Law 2005-246**

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT UNTIL AUGUST 11, 2005, AT THE LEVEL IN EFFECT ON JUNE 30, 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of S.L. 2005-144, as amended by Section 1 of S.L. 2005-201, reads as rewritten:

"**SECTION 10.** Except as otherwise provided, Parts I through VI of this act become effective July 1, 2005, and expire ~~August 5, 2005.~~ at 11:59 P.M. on August 11, 2005. Except as otherwise provided, the remainder of this act becomes effective June 30, 2005."

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

In the General Assembly read three times and ratified this the 4th day of August, 2005.

Became law upon approval of the Governor at 5:37 p.m. on the 4th day of August, 2005.

S.B. 565 **Session Law 2005-247**

AN ACT AUTHORIZING LIMITED USE OF COMMUNITY COLLEGE FACILITIES BY PRIVATE COMPANIES THAT HAVE LOANED OR DONATED INSTRUCTIONAL EQUIPMENT TO THE COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(c) The provisions of subsection (a) shall not prohibit:

…

(3d) The use of community college facilities by a private business enterprise that has loaned or donated instructional equipment to the college to demonstrate that equipment to customers. This use of college facilities shall be in accordance with policies adopted by the board of trustees of the college."

SECTION 2. G.S. 115D-20(12) reads as rewritten:

"(12) Notwithstanding the provisions of this Chapter, a community college may permit the use of its personnel or facilities, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for the specific purposes

~~services in support of economic development that are~~ set out in ~~G.S. 66-58(c)(3a).~~G.S. 66-58(c)(3a) and G.S. 66-58(c)(3d). The board of trustees of a community college must specifically approve any use of facilities or personnel under this subdivision. The State Board shall adopt rules to implement ~~the provisions of this subdivision and G.S. 66-58(c)(3a).~~this subdivision, G.S. 66-58(c)(3a), and G.S. 66-58(c)(3d)."

SECTION 3. The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on October 1 of each year on the use of community college facilities by private businesses.

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

In the General Assembly read three times and ratified this the 28th day of July, 2005.

Became law upon approval of the Governor at 5:30 p.m. on the 4th day of August, 2005.

S.B. 832 **Session Law 2005-248**

AN ACT TO ALLOW WRECKERS TO TAKE DISABLED VEHICLES UP TO FIFTY MILES FOR REPAIR, PARKING, OR STORAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118 reads as rewritten:

"§ **20-118. Weight of vehicles and load.**

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. – The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. – The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. – Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. – The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. – Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum

weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between	Maximum Weight in Pounds for any Group of Two or More Consecutive Axles					
Axles*	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000	66500	72000	77500
31		59000	62500	67500	72500	78000
32		60000	63500	68000	73000	78500
33			64000	68500	74000	79000
34			64500	69000	74500	80000
35			65500	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		

46	72500	76500
47	73500	77500
48	74000	78000
49	74500	78500
50	75500	79000
51	76000	80000
52	76500	
53	77500	
54	78000	
55	78500	
56	79500	
57	80000	

* Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

** See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

…

(7) A wrecker may tow ~~a~~ any disabled truck or other motor vehicle or combination of vehicles ~~in an emergency~~ to a place for repairs, ~~the nearest feasible point for parking~~ parking, or storage within 50 miles from the point that the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

…."

SECTION 2. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to

clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers ~~in an emergency~~ may tow a truck, combination tractor and ~~trailer~~ trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for ~~to the nearest feasible point for repair and/or storage:~~ repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety."

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

In the General Assembly read three times and ratified this the 28th day of July, 2005.

Became law upon approval of the Governor at 7:31 p.m. on the 4th day of August, 2005.

S.B. 1011 **Session Law 2005-249**

AN ACT TO AUTHORIZE MUNICIPALITIES TO ISSUE REVENUE BONDS FOR THE CONSTRUCTION OF WATER TREATMENT AND RELATED FACILITIES TO BE OWNED BY A WATER AND SEWER AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-83 is amended by adding a new subsection to read:

"(f) In addition to the powers they may now or hereafter have, each municipality has the power to finance and refinance the cost of water treatment facilities and related transmission mains, and their expansion and improvement, all or some portion of which may be located on land leased from an authority created under the provisions of G.S. 162A-3.1, for a term not less than the term of the obligations issued or otherwise incurred for the purpose. The authority may own or operate (or both) such facilities and mains and may contract with one or more of the political subdivisions that are members of the authority for operation of all or portions thereof. For this purpose, each municipality has, in addition to the powers it has under applicable law, all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1, and the political subdivisions that are members of the authority and that contract with such municipality for a supply of water and a portion of the capacity of the water treatment facilities and mains shall have all the powers of political subdivisions under G.S. 162A-6(b) and

G.S. 162A-16 contracting with an authority created under G.S. 162A-3.1. This provision is supplemental to the other provisions of this Article."

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

In the General Assembly read three times and ratified this the 27th day of July, 2005.

Became law upon approval of the Governor at 7:33 p.m. on the 4th day of August, 2005.

S.B. 592 **Session Law 2005-250**

AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorneys' fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

a. Complete restitution has been received; or
b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
c. Upon the request of the person or persons entitled thereto; and
d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;
(4) A hearing for revocation of probation;
(5) A hearing in which extradition to another state is sought;

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;

(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.

(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes;

(12) In the case of a juvenile alleged to be ~~neglected~~ abused, neglected, or dependent under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of the General Statutes;

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;

(15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145."

SECTION 3. G.S. 7A-455.1 reads as rewritten:

"§ **7A-455.1. Appointment fee in criminal cases.**

(a) Each person ~~who requests the appointment of~~ for whom counsel is appointed in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an appointment fee of fifty dollars ~~($50.00) at the time of appointment.~~ ($50.00). No fee shall be due ~~if the court finds that the person is not entitled to the appointment of counsel.~~ unless the person is convicted.

(b) ~~The appointment fee in this section is due regardless of the outcome of the proceedings. If paid in full at the time of appointment, the fifty dollars ($50.00) paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid in full at the time of appointment, the~~ The fifty-dollar ($50.00) fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation. ~~If the fee is~~

~~not paid in full at the time of appointment, and no attorneys' fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of fifty dollars ($50.00) and shall constitute a lien as prescribed by the general law of the State applicable to judgments.~~

~~(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.~~

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each ~~affidavit of indigency submitted by a defendant or other determination of indigency by the court,~~ attorney appointment, regardless of the number of cases ~~for~~ to which ~~an~~ the attorney ~~is appointed.~~ was assigned. ~~An additional appointment fee shall not be assessed for any additional cases thereafter assigned to an attorney if any cases for which a defendant was previously assessed an appointment fee are still pending. Nor shall an~~ An additional appointment fee shall not be assessed ~~if the charges for which an attorney was appointed are dismissed and subsequently refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.~~ if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 4. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and all fees and costs for appointed ~~counsel or public defender~~ counsel, public defender, or counsel employed by or under contract with the Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted. The ~~cost of~~ fees and costs for appointed ~~counsel or public defender~~ counsel, public defender, or other counsel services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs and fees to be repaid and the method of payment."

SECTION 5. G.S. 35A-1245(c) reads as rewritten:

"(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2005.

Became law upon approval of the Governor at 7:36 p.m. on the 4th day of August, 2005.

S.B. 593 **Session Law 2005-251**

AN ACT TO EXEMPT ATTORNEYS APPOINTED TO REPRESENT INDIGENT CLIENTS FROM THE FEE CHARGED BY THE CLERK OF COURT FOR PREPARING COPIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308 is amended by adding a new subsection to read:

"(b1) The fees set forth in subdivision (12) of subsection (a) of this section are not chargeable when copies are requested by an attorney who has been appointed to represent an indigent person at State expense, if the request is made in connection with the appointed case and during the duration of the appointment."

SECTION 2. This act becomes effective July 1, 2005, and applies to fees charged on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2005.

Became law upon approval of the Governor at 7:38 p.m. on the 4th day of August, 2005.

S.B. 341 **Session Law 2005-252**

AN ACT TO ESTABLISH A MODERN INVESTMENT PROGRAM FOR THE PRUDENT AND APPROPRIATE MANAGEMENT OF THE ESCHEAT FUND, FOR THE BENEFIT OF "NEEDY AND WORTHY" STUDENTS AS PROVIDED FOR IN THE STATE CONSTITUTION.

Whereas, the State Constitution mandates that proceeds of the Escheat Fund shall be utilized to aid needy and worthy North Carolina students enrolled in public institutions of higher education; and

Whereas, continued tuition increases are intensifying the demand on the Escheat Fund to provide North Carolina students with loans and tuition assistance to offset tuition hikes; and

Whereas, adoption of a proactive investment policy for the Escheat Fund will enable the State to realize a greater benefit from existing capital, thereby enhancing the Escheat Fund's constitutionally provided purpose; and

Whereas, the assets of the Escheat Fund have grown to nearly $600,000,000, necessitating the establishment of a modern investment allocation strategy for these funds; and

Whereas, such a policy will enable the State Treasurer to invest in those types of investments considered prudent for the Escheat Fund; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2(b) is amended by adding a new subdivision to read:

"(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding

the limitations imposed on the retirement funds under those subdivisions."

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

In the General Assembly read three times and ratified this the 27th day of July, 2005.

Became law upon approval of the Governor at 7:35 a.m. on the 5th day of August, 2005.

S.B. 961 **Session Law 2005-253**

AN ACT TO ESTABLISH A STATEWIDE STANDARD FOR VENDING PRODUCTS SOLD DURING THE SCHOOL DAY, AS RECOMMENDED BY THE STUDY COMMITTEE FOR CHILDHOOD OVERWEIGHT/OBESITY OF THE HEALTH AND WELLNESS TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-264 reads as rewritten:

"§ **115C-264. (Effective August 1, 2005) Operation.**

(a) In the operation of their public school ~~food~~ nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School ~~Food~~ Support, Child Nutrition Services of the Department of Public Instruction and in accordance with federal guidelines as established by the ~~Child Nutrition Division~~ Food and Nutrition Service of the United States Department of Agriculture.

(b) For nutritional purposes, the public schools shall not (i) use cooking oils in their school food programs that contain trans-fatty acids or (ii) sell processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

~~Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.~~

(c) All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation"~~shall be defined as~~ means the actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" ~~shall be defined as food service~~ means child nutrition supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving ~~food: Provided, that food service~~ food. Child nutrition personnel shall be paid from the funds of food services only for services rendered in behalf of ~~lunchroom services.~~ the child nutrition program. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services."

SECTION 2. Part 2 of Article 17 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"§ **115C-264.2. Vending machine sales.**

(a) Each school may, with the approval of the local board of education, sell to students beverages in vending machines during the school day so long as:

(1) Soft drinks are not sold (i) during the breakfast and lunch periods, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program;

(2) Sugared carbonated soft drinks, including mid-calorie carbonated soft drinks, are not offered for sale in middle schools;

(3) Not more than fifty percent (50%) of the offerings for sale to students in high schools are sugared carbonated soft drinks;

(4) Diet carbonated soft drinks are not considered in the same category as sugared carbonated soft drinks; and

(5) Bottled water products are available in every school that has beverage vending.

(b) Nothing in subsection (a) of this section prohibits a school from adopting stricter policies with respect to beverage vending.

(c) Snack vending in all schools shall, by school year 2006-2007, meet the Proficient Level of the NC Eat Smart Nutrition Standards, such that in elementary schools, no snack vending is available to students, and in middle and high schools, seventy-five percent (75%) of snack vending products have not more than 200 calories per portion or snack vending package."

SECTION 3. This act becomes effective August 1, 2005, and applies to contracts for vending services executed or renewed on and after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2005.

Became law upon approval of the Governor at 10:30 a.m. on the 5th day of August, 2005.

S.B. 594 **Session Law 2005-254**

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"§ **7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~he~~the court shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned

counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered. No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered for the value of legal services rendered to perfect an appeal to the Appellate Division or in postconviction proceedings, if all of the matters that the person raised in the proceeding are vacated, reversed, or remanded for a new trial or resentencing.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

SECTION 2. G.S. 7B-603 reads as rewritten:

"§ **7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be paid a reasonable fee fixed by the court or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(a1) The court may require payment of the fee for an attorney or guardian ad litem appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. If the party is ordered to reimburse the State for attorney or guardian ad litem fees and fails to comply with the order at the time of disposition, the court shall file a judgment against the party for the amount due the State.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(b1) The court may require payment of the fee for an attorney appointed pursuant to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have been terminated. At the dispositional hearing or other appropriate hearing, the court shall make a determination whether the respondent should be held responsible for reimbursing the State for the respondent's attorneys' fees. This determination shall include the respondent's financial ability to pay.

If the court determines that the respondent is responsible for reimbursing the State for the respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the order at the time of disposition, the court shall file a judgment against the respondent for the amount due the State.

~~(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.~~"

SECTION 3. G.S. 7A-450.3 reads as rewritten:

"§ **7A-450.3. Determination of responsibility at hearing.**

At the dispositional, sentencing or other hearing of the person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian, the court shall make a determination whether the parent, guardian or trustee should be held responsible for reimbursing the State for the person's attorney or guardian ad litem fees. This determination shall include the financial situation of the parent, guardian or trustee, the relationship of responsibility the parent, guardian or trustee bears to the person and any showings by the parent, guardian or trustee that the person is emancipated or not dependent. The test of the party's financial ability to pay is the test applied to appointment of an attorney in cases of indigency. Any provision of

any deed, trust or other writing, which, if enforced, would defeat the intent or purpose of this section is contrary to the public policy of this State and is void insofar as it may apply to prohibit reimbursement to the State.

If the court determines that the parent, guardian or trustee is responsible for reimbursing the State for the attorney or guardian ad litem fees, the court shall so order. If the party does not comply with the order ~~within 90 days,~~ at the time of disposition, the court shall file a judgment against him for the amount due the State."

SECTION 4. Sections 2 and 3 of this act become effective October 1, 2005, and apply to the appointment of counsel on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2005.

Became law upon approval of the Governor at 10:31 a.m. on the 5th day of August, 2005.

S.B. 692 **Session Law 2005-255**

AN ACT TO AUTHORIZE THE GREEN SQUARE PROJECT.

Whereas, the Green Square Project is an innovative partnership that involves private and State agencies in the development of the city block in downtown Raleigh just west of the Museum of Natural Sciences (Museum); and

Whereas, this project would finance and construct a new 60,000-square-foot State Employees' Credit Union (SECU) financial services center, a 170,000-square-foot office building for the Department of Environment and Natural Resources (DENR), and a 95,000-square-foot Nature Research Center that engages the public in understanding the scientific research that affects our daily lives; and

Whereas, the Credit Union will finance and develop the project, and The Friends of the Museum will conduct a private capital campaign to address the Museum expansion; and

Whereas, DENR currently leases 165,000 square feet of office space in Raleigh at an annual cost of $2,435,000, and the new office building could allow the relocating of environmental staff from dispersed areas to consolidate operation in the State Government Complex; and

Whereas, this would affect approximately 615 staff; and

Whereas, the financial strategy for use of offices in this new complex could be commensurate with rental space costs to DENR; and

Whereas, the Green Square partners have been in the planning phases for the past two years, the project has received endorsements from city, county, and State officials, as well as business leaders, the Capital Area Planning Commission approved the concept in November 2003, and the General Assembly approved a $500,000 allocation of DENR capital funds in the FY 2005 Budget for planning the Green Square; and

Whereas, funding is in place for Schematic Design, but before this phase begins, two aspects of the project need to be approved: the Financing Plan and the Land Transfer Plan; and

Whereas, at the end of Schematic Design, the Credit Union will begin financing the Green Square Project, the Credit Union will be responsible for financing the full cost of site preparation, design, and construction of the key elements of the

Green Square Project, and the Credit Union intends to construct the Green Square and associated parking deck in the block west of the Museum, excluding that portion of the real estate occupied by the Offices of the Attorney General; and

Whereas, the Credit Union desires that the State sell the land in 2005 (other than the property now owned by the Credit Union) to the Credit Union, in fee simple, for one dollar; and

Whereas, the State will retain a right to reacquire the Green Square Project property for the sum of one dollar in the event the Project does not go forward as planned; and

Whereas, upon completion of construction, the Credit Union will be the landlord for all of the occupants, the State will have an option to purchase all Green Square property (except for the portion of property now owned by the State Employees' Credit Union and rights to certain parking spaces in the parking deck) during the first 20 years after occupancy at an amount to be agreed upon between the State and the Credit Union, such amount not to exceed the Credit Union's investment in the portion of the Green Square Project to be leased to the Museum and DENR (calculated as described below); and

Whereas, SECU will agree that if the improvements described above are constructed as so described and the State does not exercise its option to repurchase the land and improvements within 20 years, SECU will make a payment to the State in an amount that reflects the then current market value of the land at the time of payment; and

Whereas, the Museum will lease, with an option to purchase (under the State's option to purchase described above), approximately 95,000 square feet in the Green Square Project for the Nature Research Center; and DENR will lease, with an option to purchase (under the State's option to purchase described above), approximately 170,000 square feet in the Green Square Project; and

Whereas, the Credit Union, Museum, and DENR intend that the lease payments to be paid by the Museum and DENR be such that the Credit Union receives a return on its total investment for construction costs for the site preparation, design, and construction of the space in the building leased to the Museum and DENR; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The State of North Carolina shall convey to the State Employees' Credit Union, a North Carolina Corporation, for consideration of one dollar ($1.00), title to the following described property:

PROJECT SITE:

The Green Square Project site is located diagonally and directly northwest of the State Capitol grounds and is bordered on the south by Edenton Street, on the west by McDowell, on the north by Jones, and on the east by Salisbury. The perimeter property lines of the Green Square Project define a square measuring approximately 420 feet per side. The Green Square Project site only includes the southwest, northwest, and northeast quadrants of the square. The "Old Education Building" occupies the fourth southeast quadrant. The Old Education Building will remain and will continue to be occupied by the offices of the State Attorney General.

SECTION 2. The General Assembly makes the following findings and authorizes the actions on behalf of the State set out in this section:

(1) The State Employees' Credit Union (SECU) owns a parcel of land within the city block bounded by McDowell, Salisbury, Edenton, and Jones Streets in the City of Raleigh, Wake County, North Carolina. The rest of the real estate contained in the aforementioned block is the property of the State of North Carolina.

(2) The SECU desires and intends to construct a building and associated parking deck upon the real estate described in subdivision (1) of this section, excluding that portion of the real estate occupied by the Offices of the Attorney General, such building, parking deck, and adjoining real estate hereinafter referred to as the "Green Square Project". The SECU will be responsible for the full costs of site preparation, design, and construction of the Green Square Project. Construction of the Green Square Project will necessitate demolition of certain structures already located thereon.

(3) The SECU desires that the State sell the land (other than the property now owned by the SECU) to the SECU, in fee simple, upon which the Green Square Project will be located to the SECU for one dollar ($1.00).

(4) The State will retain a right to reacquire the Green Square Project property for the sum of one dollar ($1.00) in the event the project does not go forward as planned, except for the portion of property now owned by the SECU.

(5) Upon completion of construction, the SECU will be the landlord for all of the occupants. The State shall have an option to purchase all Green Square property, excluding the property, both land and facility, designed for and intended to be occupied by the SECU and the SECU's ownership or other rights to certain parking spaces in the parking deck during the first 20 years after occupancy. The purchase price shall be an amount to be agreed upon between the State and the Credit Union, such amount not to exceed the Credit Union's investment in the portion of the Green Square Project to be leased to the Museum and DENR (calculated as described below). SECU will agree that if the improvements described above are constructed as so described and if the State does not exercise its option to repurchase the land and improvements within 20 years, the SECU will make a payment to the State in an amount that reflects the market value of the land at the time of payment.

(6) The Museum desires and intends to lease, with option to purchase (under the State's option to purchase required by subdivision (5) of this section), approximately 95,000 square feet in the Green Square Project. The Museum shall have the right to consult upon and ultimately approve the design applicable to the space the Museum intends to occupy within the building, and the Museum will be responsible for the cost of special upfitting to suit its specific Museum purposes.

(7) DENR desires and intends to lease, with option to purchase (under the State's option to purchase required by subdivision (5) of this section), approximately 170,000 square feet in the Green Square Project. DENR

shall have the right to consult upon and ultimately approve the design applicable to the space it intends to occupy within the building.

(8) SECU, The Museum and DENR intend and desire that the lease payments to be paid by the Museum and DENR be such that the SECU receives a return on its total investment for construction costs for the site preparation, design, and construction of the space in the building leased to the Museum and DENR, as the case may be, including associated parking for those respective portions of the building. Lease payments will be monthly, quarterly, or annually, as the parties mutually determine to be agreeable after completion of construction and occupancy of the space. The State, on behalf of the Museum or DENR, may exercise its option to purchase all Green Square property, excluding the property, both land and facility, designed for and intended to be occupied by the SECU and the SECU's ownership or other rights to certain parking spaces in the parking deck at any time.

(9) The parties agree to share initial architectural design costs for the Pre-Design Phase with DENR and the Museum paying sixty-seven percent (67%) and the Credit Union paying thirty-three percent (33%). After completion of the Schematic Design Phase, DENR will obtain final approval of the Green Square Project from the Capital Area Planning Commission.

(10) Upon receipt of the approval set forth in paragraph 9, all further design site preparation, design, and construction costs may be included by the SECU, as part of its overall investment in the project and apportioned appropriately among the project components (and included in the calculation of lease payments or the purchase price of the Green Square Project).

(11) All parties hereto desire, intend, and agree to use best efforts to secure the requisite approvals to proceed with the Green Square Project. Upon securing such approvals, the parties agree that the details of the Project and the responsibilities of the respective parties shall be set forth in a binding contract that shall be executed prior to the beginning of construction. That contract will follow State laws and policies concerning historically underutilized businesses. Such agreement may contain the details of the lease payments to be paid by DENR and the Museum during any period the facilities are leased by them, the terms under which the State may exercise its options to purchase portions of the building, and such other details as shall be necessary or appropriate. Such agreement shall be entered into on behalf of the State by the Secretary of Administration, subject to the approval of the State Treasurer and the State Budget Officer.

(12) The State agrees and acknowledges that the SECU will at all times, now and in the future, retain full ownership and title to the portion of the new facility under the control of SECU and the associated land and parking.

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

In the General Assembly read three times and ratified this the 27th day of July, 2005.

Became law upon approval of the Governor at 10:33 a.m. on the 5th day of August, 2005.

S.B. 98 **Session Law 2005-256**

AN ACT TO AUTHORIZE THE ORANGE COUNTY BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN CHAPEL HILL TOWNSHIP IN WHICH THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE ON ELECTION DAY AS THE VOTING METHOD, ALL TO BE KNOWN AS VOTING CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. With the approval of the State Board of Elections, the Orange County Board of Elections may conduct a pilot program in Chapel Hill Township for any or all primaries or elections occurring prior to January 1, 2007, where the requirements of this section prevail over any other requirement concerning voting at one-stop sites or on election day. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 on election day as the method of voting. Voting places, whether during the one-stop period or on election day, shall be known as voting centers. The pilot program consists of the following elements:

(1) Any voter properly registered in Chapel Hill Township may vote at any voting center during the one-stop period established in G.S. 163-227.2 or on election day.

(2) On election day, the only places open to vote in Chapel Hill Township are those designated as voting centers.

(3) All voting centers shall have a Web-based or online connection to the voter registration system so that voter registration information and voting history can be checked in a timely manner to ensure against any voter voting more than once.

(4) Notwithstanding G.S. 163-227.2(e1), the State Board of Elections shall determine which ballots must be made retrievable and identifiable to the county board of elections in order to ensure that the vote count by eligible voters is accurate. If any vote need not be identifiable, it shall not be made so, notwithstanding G.S. 163-227.2(e1).

(5) The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process which requires completion of an absentee ballot application, but the process must be auditable. As required by G.S. 163-166.7, the voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. As provided by G.S. 163-166.7, if the voter is unable to sign, a voting center official shall enter the person's name on the same document before the voter votes. A voter at a voting center shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8.

(6) A larger number of voting centers may be open on election day than during the earlier part of the one-stop period.

(7) Election returns shall be reported by regular precinct as well as by voting center. Notwithstanding G.S. 163-132.5G, for primary elections in 2006, those returns by regular precinct shall be reported by May 1,

2007, and for the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. G.S. 163-132.5G shall not apply to elections held in 2005 under this act.

(8) Notwithstanding G.S. 163-227.2(g), the State Board of Elections may allow the county board of elections during the regular one-stop voting period to designate voting centers in commercial buildings that are not public buildings.

(9) Notwithstanding G.S. 163-227.2(g), on election day any building may be designated as a voting center, but the office of the county board of elections does not have to be designated as a voting center.

(10) Notwithstanding G.S. 163-227.2(g), officials appointed pursuant to G.S. 163-41, 163-42, and 163-42.1 may be assigned to staff the voting centers. The Plan of Implementation shall provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if there were precinct polling places.

(11) The Plan of Implementation may for administrative purposes treat the entire township as one precinct with multiple voting places on election day, but a voter must, when appearing to vote, report any change of address.

(12) Before voting centers may be used under this section, a Plan of Implementation must be approved unanimously by the county board of elections and then approved by the Executive Director of the State Board of Elections. Prior to adoption, the county board of elections shall conduct a public hearing and notify the county chair of each political party under Article 9 of Chapter 163 of the General Statutes. The county board of elections shall develop an outreach and education campaign to inform voters about the changes in voting locations.

SECTION 2. The State Board of Elections shall closely monitor the pilot program and report its findings and recommendations to the General Assembly at its 2005 Regular Session in 2006, and to the 2007 Regular Session of the General Assembly.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 422 **Session Law 2005-257**

AN ACT TO PROVIDE FOR RESIDENTS OF FORSYTH COUNTY TO FISH IN THE WATERS OF TRIAD PARK WITHOUT A FISHING LICENSE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the licensing requirements of G.S. 113-270.1B, a resident of Forsyth County fishing with hook and line using natural bait is entitled to the same exemption provided to residents of Guilford County under G.S. 113-276(e) when fishing on waters located in Guilford County but within Triad Park, a park jointly owned by Guilford and Forsyth Counties and situated in both counties.

SECTION 2. This act applies only to Forsyth County.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

S.B. 348 **Session Law 2005-258**

AN ACT TO PROVIDE THAT THE TOWN OF NORTH WILKESBORO MAY ACQUIRE AND CONVEY PROPERTY TO THE STATE OF NORTH CAROLINA FOR USE AS A PRISON.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 600 of the 1995 Session Laws, as amended by S.L. 2000-31, S.L. 2002-85, and S.L. 2004-28, is amended by adding a new subsection to read:

"**Section 1.(a)** The Counties of Alexander, Anson, Bertie, Columbus, Greene, Scotland, Stanly, and Transylvania have power under general law to acquire real and personal property and convey it to the State under G.S. 160A-274 or other applicable law for use as correctional facilities.

Section 1.(b) The Town of Windsor has the power under the general law to acquire real and personal property and convey it to the State under G.S. 160A-274 or other applicable law for use as a correctional facility. It may acquire that property by eminent domain, and such power under this subsection is supplementary to any other power it may have to take property by eminent domain.

Section 1.(c) The Town of North Wilkesboro has the power under general law to acquire real and personal property and convey it to the State under G.S. 160A-274 or other applicable law for use as a correctional facility."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 476 **Session Law 2005-259**

AN ACT RELATING TO THE BOUNDARY SETTLEMENT BETWEEN WILSON AND GREENE COUNTIES AND PERTAINING TO CERTAIN REAL PROPERTY RECORDS IN THOSE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. The recordation and filing of all deeds, deeds of trust mortgages, liens, contracts, and all other instruments and muniments of title required or permitted by law to be registered or filed and which have been accepted by the Wilson County Register of Deeds or other appropriate official for filing or recordation and which purport to convey any interest in the real property containing 322.79 acres, lying south of the centerline of Contentnea Creek and east of the easterly property line of Wayne County are hereby validated to the same extent as if the instruments had been recorded, registered, or filed in Greene County. The property referred to in this section is more particularly shown on a map entitled "Plat of Re-Survey of

Wayne/Wilson/Greene County Lines North Carolina", which is recorded in the Office of the Register of Deeds of Wilson County and in the Office of the Register of Deeds of Greene County.

SECTION 2. On and after the effective date of this act, all further documents that affect or purport to affect the title of the 322.79 acres described in Section 1 of this act shall be filed, recorded, or registered in the Office of the Register of Deeds of Greene County or other appropriate office.

SECTION 3. The real property described in Section 1 of this act shall be listed for ad valorem taxes in Wilson County for 2005 and in Greene County for 2006 and thereafter.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 601 **Session Law 2005-260**

AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY ON THE STREETS OWNED BY THE CAROLINA LAKES PROPERTY OWNERS' ASSOCIATION IN HARNETT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. With the exception of any provisions prohibiting or regulating the operation of private golf carts, all-terrain vehicles, off-road motorcycles, and go-carts, the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Carolina Lakes Property Owners' Association, Inc., or the members of the Carolina Lakes Property Owners' Association, Inc. For purposes of this act, streets, roadways, and alleys in the Carolina Lakes Community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01.

SECTION 2. This section is enforceable by any law enforcement officer acting within his territorial jurisdiction.

SECTION 3. This act shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Carolina Lakes Property Owners' Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Carolina Lakes Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Board of Commissioners of Harnett County. Pursuant to G.S. 20-141, the Harnett County Board of Commissioners may authorize by ordinance higher or lower speeds.

SECTION 4. This act applies to Harnett County only.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 689 **Session Law 2005-261**

AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED FOOD AND BEVERAGES TAX BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 1.(b) Definitions. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. In addition, the following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax.

(2) Prepared food and beverages. – The term includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

SECTION 1.(c) Exemptions. – The prepared food and beverages tax does not apply to the following sales of prepared food and beverages:

(1) Prepared food and beverages served to residents in boardinghouses and sold together on a periodic basis with rental of a sleeping room or lodging.

(2) Retail sales exempt from taxation under G.S. 105-164.13.

(3) Retail sales through or by means of vending machines.

(4) Prepared food and beverages served by a retailer subject to the local occupancy tax if the charge for the prepared food and beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.

(5) Prepared food and beverages furnished without charge by an employer to an employee.

(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments, other than sales of prepared food and

beverages in the delicatessen or similar department of the grocer or grocery section.

(7) Prepared food and beverages served on a federal military reservation.

SECTION 1.(d) Collection. – Every retailer subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing prepared food and beverages. The tax shall be stated separately on the sale document and shall be paid by the purchaser to the retailer as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

SECTION 1.(e) Administration. – The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city's director of finance and administration in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every retailer liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the city's director of finance and administration under this section is not a public record and may not be disclosed except in accordance with G.S. 160A-208.1.

The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section. The uniform meals tax penalty provisions of G.S. 160A-214.1 apply to a tax levied under this section.

SECTION 1.(f) Refunds. – The city shall refund to a nonprofit or governmental entity the prepared food and beverages tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or if the sale is exempt under G.S. 105-164.13. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it must attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases or a written statement that the purchases were exempt from the tax. An applicant for a refund under this subsection must provide any information required by the city to substantiate the claim.

SECTION 1.(g) Use of Net Proceeds. – The City of Monroe must use the net proceeds of a tax levied under this section for the construction, operation, and maintenance of a civic center.

SECTION 1.(h) Effective Date of Levy. – A tax levied under this section shall become effective on the date specified in the ordinance levying the tax. The date must be the first day of a calendar month and may not be before the first day of the fourth month after the date the ordinance is adopted.

SECTION 1.(i) Repeal. – A tax levied under this section may be repealed by an ordinance adopted by the Monroe City Council. The Monroe City Council shall repeal the tax when the Civic Center Project for which the tax was imposed is constructed and any debt for the Project has been paid. Any repeal shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal ordinance is adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 820 **Session Law 2005-262**

AN ACT TO LENGTHEN THE FOX TRAPPING SEASON IN PERSON COUNTY AND TO ELIMINATE THE SEASON BAG LIMITS ON THAT SEASON.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 108 of the 1985 Session Laws, as amended by Chapter 890 of the 1985 Session Laws, reads as rewritten:

"**Sec. 2.** Notwithstanding any other provision of law, there is an open season for taking foxes by trapping from ~~January 2 through January 31~~ September 1 through September 30 and from December 1 through February 20 of each year. During this season, all leghold traps set on dry land with solid anchor shall have at least three swivels in the trap chain and no leghold traps larger than size one and one-half may be used."

SECTION 2. Section 3 of Chapter 108 of the 1985 Session Laws, as amended by Chapter 890 of the 1985 Session Laws, is repealed.

SECTION 3. This act applies only to Person County.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 922 **Session Law 2005-263**

AN ACT TO PROVIDE THAT FILLING OF VACANCIES IN THE OFFICES OF REGISTER OF DEEDS, SHERIFF, AND COUNTY COMMISSIONER IN BEAUFORT COUNTY SHALL BE IN ACCORDANCE WITH GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1997-248 is repealed.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 1010 **Session Law 2005-264**

AN ACT TO PROHIBIT HUNTING ON THE PROPERTY OF ANOTHER WITHOUT WRITTEN PERMISSION IN WILSON AND ORANGE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to hunt on the land of another without having on one's person while hunting the written permission, signed and dated for the current hunting season, of the landowner or lessee, or the landowner's or lessee's designee.

SECTION 2. Violation of this act is a Class 3 misdemeanor for the first offense and a Class 2 misdemeanor for a second or subsequent offense.

SECTION 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 4. This act applies only to Orange and Wilson Counties.

SECTION 5. This act becomes effective October 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 1047 **Session Law 2005-265**

AN ACT AMENDING THE CHARTER OF THE TOWN OF WRIGHTSVILLE BEACH TO ALLOW THE TOWN TO APPOINT A BOARD OF ADJUSTMENT AS PROVIDED BY GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.8 of the Charter of the Town of Wrightsville Beach, being Chapter 611 of the 1989 Session Laws, reads as rewritten:

"Sec. 2.8. **Board of adjustment.** ~~Notwithstanding the provisions of G.S. 160A-388, the Town Board shall serve as the Board of Adjustment and shall have and may exercise the same powers and duties as are granted by law to appointed boards of adjustment.~~The Town Board shall appoint a board of adjustment that shall have and exercise the powers and duties provided in G.S. 160A-388."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

H.B. 1052 **Session Law 2005-266**

AN ACT TO PERMIT TRASH TRUCKS WHILE COLLECTING GARBAGE TO STOP ON THE PAVEMENT OF HIGHWAYS OUTSIDE MUNICIPAL LIMITS IN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge. This subsection shall not apply to a vehicle stopped on the highway while it is collecting garbage, as defined in G.S. 20-118(c)(5)g."

SECTION 2. This act applies to Brunswick County only.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law on the date it was ratified.

S.B. 1059 **Session Law 2005-267**

AN ACT AUTHORIZING THE LICENSURE OF PERFUSIONISTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 40.

"Perfusionist Licensure Act.

"§ **90-681. Legislative findings.**

The General Assembly finds that the practice of perfusion is an area of health care that is continually evolving to include more sophisticated and demanding patient care activities. The General Assembly further finds that the practice of perfusion by unauthorized, unqualified, unprofessional, and incompetent persons is a threat to public health, safety, and welfare, and therefore it is necessary to establish minimum standards of education, training, and competency for persons engaged in the practice of perfusion.

"§ **90-682. Definitions.**

The following definitions apply in this Article:

(1) Certified clinical perfusionist. – A person who has successfully completed the examination process and has been issued a certificate by the American Board of Cardiovascular Perfusion or its successor organization.

(2) Committee. – The North Carolina Perfusion Advisory Committee.

(3) Extracorporeal circulation. – The diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidneys, liver, or other organs.

(4) Licensee. – A person who has been issued a license to practice perfusion under this Article.

(5) Medical Board. – The North Carolina Medical Board, as established under Article 1 of this Chapter.

(6) Perfusion protocols. – Perfusion-related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals.

(7) Practice of perfusion. – The performing of functions, under the supervision of a licensed physician, necessary for the support,

treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of those functions, and the ensuring of safe management of physiological function by monitoring and analyzing the parameters of the systems during any medical situation where it is necessary to support or replace the patient's cardiopulmonary or circulatory function. The term also includes the use of extracorporeal circulation, long-term cardiopulmonary support techniques, including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies; counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion; the use of techniques involving blood management, advanced life support, and other related functions; and, in the performance of the acts described in this subdivision, (i) the administration of pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician; (ii) the performance and use of anticoagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematological monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution, and hemodialysis in conjunction with perfusion service; and (iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

"§ **90-682.1. Medical Board approval required.**

The Committee shall report to the Medical Board all actions taken by the Committee pursuant to this Article, except for actions taken by the Committee pursuant to G.S. 90-684. No action by the Committee is effective unless the action is approved by the Medical Board. The Medical Board may also rescind or supercede, in whole or in part, any action taken by the Committee in carrying out the provisions of this Article, except for actions taken by the Committee pursuant to G.S. 90-684.

"§ **90-683. License required; exemptions.**

(a) On or after July 1, 2006, no person shall practice or offer to practice perfusion as defined in this Article, use the title 'licensed perfusionist' or 'provisional licensed perfusionist', use the letters 'LP' or 'PLP', or otherwise indicate or imply that the person is a licensed perfusionist or a provisionally licensed perfusionist unless that person is currently licensed as provided in this Article.

(b) The provisions of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to the practice of that profession or occupation and the person does not represent himself or herself as a licensed perfusionist or a provisionally licensed perfusionist.

(2) A student enrolled in an accredited perfusion education program if perfusion services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed perfusionist.

(3) A perfusionist employed by the United States government when performing duties associated with that employment.

(4) A person performing autotransfusion or blood conservation techniques under the direct supervision of a licensed physician.

"§ **90-684. Perfusion Advisory Committee.**

(a) Composition and Terms. – The North Carolina Perfusion Advisory Committee is created. The Committee shall consist of seven members who shall serve staggered terms. The initial Committee members shall be selected on or before October 1, 2005, as follows:

(1) The North Carolina Medical Board shall appoint three licensed perfusionists, two of whom shall serve a term of three years and one of whom shall serve a term of two years.

(2) The North Carolina Medical Board shall appoint one physician who is licensed under Article 1 of Chapter 90 of the General Statutes and is a cardiothoracic surgeon or a cardiovascular anesthesiologist, who shall serve a term of two years.

(3) The North Carolina Hospital Association shall appoint two hospital administrators, one of whom shall serve a term of two years and one of whom shall serve a one-year term.

(4) The Governor shall appoint one public member who shall serve a one-year term.

Upon the expiration of the terms of the initial Committee members, members shall be appointed by the appointing authorities designated in subdivisions (1) through (4) of this subsection for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(b) Qualifications. – Members of the Committee shall be citizens of the United States and residents of this State. The perfusionist members shall hold current licenses from the Committee and shall remain in good standing with the Committee during their terms. Public members of the Committee shall not be: (i) trained or experienced in the practice of perfusion, (ii) an agent or employee of a person engaged in the practice of perfusion, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Committee.

(c) Vacancies. – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Committee may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed perfusionist shall be disqualified from participating in the official business of the Committee until the charges have been resolved.

(e) Compensation. – Each member of the Committee shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(f) Officers. – The officers of the Committee shall be a chair, a vice-chair, and other officers deemed necessary by the Committee to carry out the purposes of this Article. All officers shall be elected annually by the Committee for two-year terms and shall serve until their successors are elected and qualified. The chair of the Committee shall be a licensed perfusionist.

(g) Meetings. – The Committee shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Committee. The Committee shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Committee members constitutes a quorum.

"§ **90-685. Powers of the Committee.**

The Committee shall have the power and duty to:

(1) Administer this Article.
(2) Issue interpretations of this Article.
(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
(4) Employ and fix the compensation of personnel that the Committee determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.
(5) Determine the qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.
(6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue reprimands, and carry out any other disciplinary actions authorized by this Article.
(7) Set fees for licensure, provisional licensure, reciprocal licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Article.
(8) Establish continuing education requirements for licensees.
(9) Establish a code of ethics for licensees.
(10) Maintain a current list of all persons who have been licensed under this Article.
(11) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.
(12) Maintain a record of all proceedings and make available to all licensees and other concerned parties an annual report of all Committee action.
(13) Adopt a seal containing the name of the Committee for use on all official documents and reports issued by the Committee.

"§ **90-686. Qualifications for licensure.**

(a) An applicant shall be licensed to practice perfusion if the applicant meets all of the following qualifications:

(1) Is at least 18 years old.
(2) Completes an application on a form provided by the Committee.
(3) Successfully completes a perfusion education program approved by the Committee.
(4) Pays the required fee under G.S. 90-689.

(5) Is a certified clinical perfusionist.

(b) All persons licensed under this section shall practice perfusion under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes.

"§ **90-687. Reciprocity.**

The Committee may grant, upon application and payment of proper fees, a license to a person who has been licensed to practice perfusion in another state or territory of the United States whose standards of competency are substantially equivalent to those provided in this Article or holds a current certificate as a certified clinical perfusionist.

"§ **90-688. Provisional license.**

The Committee may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed an approved perfusion education program and pays the required fee under G.S. 90-689. A provisional license shall allow the individual to practice perfusion under the supervision and direction of a licensed perfusionist and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. Provisional licenses shall be renewed in accordance with the provisions of G.S. 90-690.

"§ **90-689. Expenses; fees.**

(a) All fees shall be payable to the Medical Board and deposited in the name of the Medical Board in financial institutions designated by the Medical Board as official depositories. These fees shall be used to carry out the purposes of this Article.

(b) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Medical Board exclusively out of the fees received by the Medical Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation authorized by this Article be charged against the State treasury.

(c) The Committee, upon the approval of the Medical Board, shall establish fees not exceeding the following amounts:

(1)	License application	$350.00
(2)	Biennial renewal of license	$350.00
(3)	Late renewal of license	$100.00
(4)	Provisional license	$175.00
(5)	Copies of rules	Cost.

"§ **90-690. Renewal of licenses.**

(a) All licenses to practice perfusion shall expire two years after the date they were issued. The Committee shall send a notice of expiration to each licensee at his or her last known address at least 30 days prior to the expiration of his or her license. All applications for renewal of unexpired licenses shall be filed with the Committee and accompanied by proof satisfactory to the Committee that the applicant has completed the continuing education requirements established by the Committee and the renewal fee as required by G.S. 90-689.

(b) An application for renewal of a license that has been expired for less than three years shall be accompanied by proof satisfactory to the Committee that the applicant has satisfied the continuing education requirements established by the Committee and the renewal and late fees required by G.S. 90-689. A license that has been expired for more than three years shall not be renewed, but the applicant may

apply for a new license by complying with the current requirements for licensure under this Article.

"**§ 90-691. Suspension, revocation, and refusal to renew.**

(a) The Committee may deny, refuse to renew, suspend, or revoke an application or license or order probation or issue a reprimand if the applicant or licensee:

(1) Gives false information or withholds material information from the Committee in procuring or attempting to procure a license.

(2) Gives false information or withholds material information from the Committee during the course of an investigation conducted by the Committee.

(3) Has been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to practice perfusion as defined in this Article or that indicates the person has deceived, defrauded, or endangered the public.

(4) Has a habitual substance abuse or mental impairment that interferes with his or her ability to provide appropriate care as established by this Article or rules adopted by the Committee.

(5) Has demonstrated gross negligence, incompetency, or misconduct in the practice of perfusion as defined in this Article.

(6) Has had an application for licensure or a license to practice perfusion in another jurisdiction denied, suspended, or revoked for reasons that would be grounds for similar action in this State.

(7) Has willfully violated any provision of this Article or rules adopted by the Committee.

(b) The taking of any action authorized under subsection (a) of this section may be ordered by the Committee after a hearing is held in accordance with Article 3A of Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if it finds that the reasons for revocation no longer exist and that the person can reasonably be expected to perform the services authorized under this Article in a safe manner.

"**§ 90-692. Enjoining illegal practices.**

The Committee may apply to the superior court for an order enjoining violations of this Article. Upon a showing by the Committee that any person has violated this Article, the court may grant injunctive relief.

"**§ 90-693. Civil penalties; disciplinary costs.**

(a) Authority to Assess Civil Penalties. – The Committee may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Committee. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Committee shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Committee shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Committee.

(d) Costs. – The Committee may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Committee.

"§ **90-694. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

SECTION 2. Notwithstanding the requirements of this act, the North Carolina Perfusion Advisory Committee shall issue a license to practice perfusion to any person who has, as his or her primary job function, been operating cardiopulmonary bypass systems during cardiac surgery cases in a licensed health care facility in the five years immediately preceding application to the Committee or within five of the last eight years preceding application to the Committee.

SECTION 3. Notwithstanding G.S. 90-684(a)(1), as enacted by Section 1 of this act, the initial perfusionists appointed to the North Carolina Perfusion Advisory Committee by the North Carolina Medical Board do not have to meet the licensure requirements established under G.S. 90-686, as enacted by Section 1 of this act. The appointees must be certified clinical perfusionists and must apply for and obtain a license from the Committee within 90 days after the Committee begins issuing licenses.

SECTION 4. This act is effective when it becomes law. Section 2 of this act expires December 31, 2007.

In the General Assembly read three times and ratified this the 4th day of August, 2005.

Became law upon approval of the Governor at 1:28 p.m. on the 12th day of August, 2005.

S.B. 324 **Session Law 2005-268**

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO MAKE CONFORMING CHANGES TO THE OTHER ENTITY ACTS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO THE NORTH CAROLINA BUSINESS CORPORATION ACT.

SECTION 1. G.S. 55-6-31 reads as rewritten:

"§ **55-6-31. Corporation's acquisition of its own shares.**

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

~~(c) Articles of amendment required by subsection (b) may be adopted by the board of directors without shareholder action and shall be delivered to the Secretary of State for filing. The articles must set forth:~~

~~(1) The name of the corporation;~~

~~(2) The reduction in the number of authorized shares, itemized by class and series; and~~

~~(3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.~~"

SECTION 2. G.S. 55-7-04(a) reads as rewritten:

"(a) Action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the action or, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more unrevoked written consents bearing the date of signature and signed by ~~the number of~~ shareholders sufficient to take the action without a meeting, before or after such action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent to action taken without meeting or revocation thereof may be in electronic form and delivered by electronic means."

SECTION 3. G.S. 55-7-04(b) reads as rewritten:

"(b) A shareholder's written consent to action to be taken without a meeting shall cease to be effective on the sixty-first day after the date of signature appearing on the consent unless prior to the sixty-first day the corporation has received unrevoked written consents sufficient under subsection (a) of this section to take the action without meeting. If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the earliest date of signature appearing on any consent that is to be counted in satisfying the requirements of subsection (a) of this section. A shareholder may only revoke a written consent if such shareholder delivers to the corporation a written revocation prior to the corporation's receipt of unrevoked written consents sufficient under subsection (a) of this section to take the action."

SECTION 4. G.S. 55-7-24(b)(4) reads as rewritten:

"(4) The name signed purports to be that of a ~~beneficial owner~~ pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment;".

SECTION 5. G.S. 55-7-24(d) reads as rewritten:

"(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or G.S. 55-7-22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection."

SECTION 6. G.S. 55-8-01(b) reads as rewritten:

"(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, except as otherwise provided in the articles of incorporation or in an agreement valid under G.S. 55-7-31(b)."

SECTION 7. G.S. 55-8-03 reads as rewritten:

"§ **55-8-03. Number and election of directors.**

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) ~~The shareholders may from time to time increase or decrease the number of directors by amendment to the articles of incorporation or the bylaws, but no such decrease shall be made~~ The number of directors may be increased or decreased from

time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) ~~is applicable when~~ applies, the number of directors shall not be decreased unless one of the following applies:

(1) The decrease is approved by the shareholders in a vote in which the number of shares voting against the proposal for decrease would not be sufficient to elect a director by cumulative ~~voting if such shares are entitled to be voted cumulatively for the election of directors.~~voting.

(2) ~~If a board of directors has power under the articles of incorporation or bylaws to fix or change the number of directors and if the shareholders do not have the right to cumulate their votes for directors, the board may increase or decrease the number of directors by not more than thirty percent (30%) during any 12-month period.~~The decrease is made pursuant to a provision of the articles of incorporation or bylaws fixing a minimum and maximum number of directors and authorizing the number of directors to be fixed or changed from time to time, within the maximum and the minimum, by the shareholders or, unless the articles of incorporation or an agreement valid under G.S. 55-7-31 provides otherwise, the board of directors.

~~(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or (unless the articles of incorporation or an agreement valid under G.S. 55-7-31 shall otherwise provide) the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable range size board or vice versa.~~

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under G.S. 55-8-06."

SECTION 8. G.S. 55-8-06 reads as rewritten:

"§ **55-8-06. Staggered terms for directors.**

~~If the number of directors is fixed at nine or more directors, the~~ The articles of incorporation or bylaws adopted by the shareholders may provide for staggering ~~their~~ the terms of directors by dividing the total number of directors into two, three, or four groups, with each group containing one-half, one-third, or one-fourth of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, the terms of the third group, if any, expire at the third annual shareholders' meeting after their election, and the terms of the fourth group, if any, expire at the fourth annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two, three, or four years, as the case may be, to succeed those whose terms expire."

SECTION 9. G.S. 55-8-21 reads as rewritten:

"§ **55-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more unrevoked written consents signed by each director

before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a director's consent to action taken without meeting or revocation thereof may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when ~~the last director signs the consent,~~ one or more unrevoked consents signed by all of the directors are delivered to the corporation, unless the ~~consent specifies~~ consents specify a different effective date. A director's consent to action may be revoked in a writing signed by the director and delivered to the corporation prior to the action becoming effective.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 10. G.S. 55-8-25 reads as rewritten:

"§ **55-8-25. Committees.**

(a) Unless this Chapter, the articles of ~~incorporation~~ incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on ~~them. Each committee must have two or more members, who serve at the pleasure of the board of directors.~~ any such committee.

(b) ~~The~~ Unless this Chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles of incorporation or bylaws to take action under G.S. 55-8-24.

(b1) The creation and appointment of a committee pursuant to G.S. 55-7-44(b)(2) may be approved in the manner set forth in G.S. 55-7-44(b)(2).

(c) G.S. 55-8-20 through ~~G.S. 55-8-24, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors,~~ G.S. 55-8-24 apply both to committees of the board of directors and to their ~~members as well.~~ members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under G.S. 55-8-01.

(e) A committee ~~may not, however:~~ shall not, however, do any of the following:

(1) Authorize ~~distributions;~~ distributions.

(2) Approve or propose to shareholders action that this act requires be approved by ~~shareholders;~~ shareholders.

(3) Fill vacancies on the board of directors or on any of its ~~committees;~~ committees.

(4) Amend articles of incorporation pursuant to ~~G.S. 55-10-02;~~ G.S. 55-10-02.

(5) Adopt, amend, or repeal ~~bylaws;~~ bylaws.

(6) Approve a plan of merger not requiring shareholder ~~approval;~~ approval.

~~(7) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or~~

~~(8) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of~~

~~the corporation) to do so within limits specifically prescribed by the board of directors.~~

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in G.S. 55-8-30."

SECTION 11. G.S. 55-8-31(c) reads as rewritten:

"(c) For purposes of subsection (a)(1) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the ~~transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director.~~transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection."

SECTION 12. G.S. 55-8-43 reads as rewritten:

"§ **55-8-43. Resignation and removal of officers.**

(a) An officer may resign at any time by communicating his resignation to the corporation. A resignation is effective when it is communicated unless it specifies in writing a later effective ~~date.~~ time. If a resignation is made effective at a later ~~date~~ time and the corporation accepts the future effective ~~date,~~ time, its board of directors or the appointing officer may fill the pending vacancy before the effective ~~date~~ time if the board of directors or the appointing officer provides that the successor does not take office until the effective ~~date.~~ time.

(b) ~~A board of directors may remove any officer at any time with or without cause.~~ An officer may be removed at any time with or without cause by (i) the board of directors, (ii) the appointing officer, unless the bylaws or the board of directors provide otherwise, or (iii) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed."

SECTION 13. G.S. 55-10-02 reads as rewritten:

"§ **55-10-02. Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt ~~one or more~~ any of the following amendments to the corporation's articles of incorporation without shareholder ~~action:~~ approval:

(1) Reserved for future codification ~~purposes;~~ purposes.

(2) To delete the names and addresses of the initial ~~directors;~~ directors.

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of ~~State;~~ State.

(4) If the corporation has only one class of shares outstanding:

a. To change each issued and unissued authorized share of ~~an outstanding~~ the class into a greater number of whole shares ~~if the corporation has only shares of that class outstanding;~~ of the class; or

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

(5) To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the ~~name; or~~ name.

(5a) To reflect a reduction in authorized shares pursuant to G.S. 55-6-31(b) when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.

(5b) To delete a class of shares from the articles of incorporation, as a result of the operation of G.S. 55-6-31(b), when there are no remaining authorized shares of the class because the corporation has acquired all authorized shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

(6) To make any other change expressly permitted by this ~~act~~ Chapter to be made without shareholder ~~action.~~approval."

SECTION 14. G.S. 55-10-03 reads as rewritten:

"§ **55-10-03. Amendment by board of directors and shareholders.**

(a) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted pursuant to this section. Except as provided in G.S. 55-14A-01, the proposed amendment must be adopted by the board of directors. ~~A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.~~

(b) ~~For the amendment to be adopted:~~

~~(1) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must communicate the basis for its lack of a recommendation to the shareholders with the amendment; and~~

~~(2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (c).~~

Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should not make such a recommendation, in which event the board of directors must communicate the basis for that determination to the shareholders with the amendment.

(c) The board of directors may condition its submission of the ~~proposed~~ amendment to the shareholders on any basis.

(d) ~~The~~ If the amendment must be approved by the shareholders and the approval is to be given at a meeting, the corporation ~~shall~~ must notify each ~~shareholder,~~ shareholder in accordance with G.S. 55-7-05, whether or not the shareholder is entitled to vote, of the ~~proposed shareholders'~~ meeting ~~in accordance with G.S. 55-7-05.~~ of shareholders at which the amendment is to be submitted for approval. The notice of

meeting must state that the purpose, or one of the purposes, of the meeting is to consider the ~~proposed~~ amendment and the notice must contain or be accompanied by a copy or summary of the amendment. If the amendment is required to be approved by the shareholders and the approval is to be obtained through action without meeting, the corporation must notify shareholders if required by G.S. 55-7-04(d).

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment."

SECTION 15. G.S. 55-10-07 reads as rewritten:

"§ **55-10-07. Restated articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any ~~time~~ time, with or without shareholder ~~action.~~approval, to consolidate all amendments into a single document.

(b) The restated articles of incorporation may include one or more new amendments to the articles. If the restated articles of incorporation include ~~an~~ a new amendment requiring shareholder approval, it must be adopted and approved as provided in G.S. 55-10-03. The restated articles of incorporation may include a statement of the address of the current registered office and the name of the current registered agent of the corporation, and no other.

~~(c) If the board of directors submits restated articles of incorporation for shareholder action, the corporation shall notify each shareholder entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also (i) state that the purpose, or one of the purposes, of the meeting is to consider the proposed restated articles of incorporation, (ii) contain or be accompanied by a copy of the proposed restated articles of incorporation, and (iii) identify any amendment or other change they would make in the articles.~~

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement which shall:

(1) Set forth the name of the corporation;

(2) Attach as an exhibit thereto the text of the restated articles of incorporation;

(3) State ~~whether~~ that the restated articles of incorporation ~~contain an amendment to the articles requiring shareholder approval and, if they do not, that the board of directors adopted the restated articles of incorporation;~~ consolidate all amendments into a single document; and

(4) If the restated articles of incorporation contain ~~an~~ a new amendment to the ~~articles requiring shareholder approval, state that shareholder approval was obtained as required by this Chapter.~~ articles, include the statements required by G.S. 55-10-06.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments ~~to them.~~ to the original articles of incorporation.

(f) The Secretary of State may certify restated articles of ~~incorporation,~~ incorporation as the articles of incorporation currently in ~~effect,~~ effect without including the other information required by subsection ~~(d).~~ (d) of this section."

SECTION 16. G.S. 55-11-01 is amended by adding the following new subsection to read:

"(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document."

SECTION 17. G.S. 55-11-02 reads as rewritten:

"§ **55-11-02. Share exchange.**

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by G.S. 55-11-03) approve the exchange.

(b) The plan of exchange must set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the exchange;

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(c1) The provisions of the plan of share exchange, other than the provision required by subdivision (b)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of share exchange if the plan of share exchange sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(d) This section does not limit ~~the power of a corporation to acquire~~ the acquisition of all or part of the shares of one or more classes or series of ~~another~~ a corporation through a voluntary exchange or otherwise."

SECTION 18. G.S. 55-11-03(e) reads as rewritten:

"(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the ~~shareholders~~ shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater ~~vote or a vote by voting groups,~~ vote, the plan of merger or share

exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a share exchange. If any shareholder of a merging corporation has or will have personal liability for any existing or future obligation of the surviving corporation in the merger solely as a result of owning one or more shares in the surviving corporation, then, in addition to the requirements of this subsection, authorization of the plan of merger by the merging corporation shall require the affirmative vote or written consent of that shareholder."

SECTION 19. G.S. 55-11-03(g) reads as rewritten:

"(g) ~~Action~~ Unless the articles of incorporation provide otherwise, approval by the surviving corporation's shareholders of ~~the surviving corporation on~~ a plan of merger is not required ~~if:~~ if all of the following conditions are met:

(1) ~~The~~ Except for amendments permitted by G.S. 55-10-02, its articles of incorporation ~~of the surviving corporation~~ will not ~~differ (except for amendments enumerated in G.S. 55-10-02) from its articles before the merger;~~ be changed.

(2) Each shareholder of the ~~surviving~~ corporation whose shares were outstanding immediately before the effective date of the merger will hold the same shares, with identical ~~designations,~~ preferences, limitations, and relative rights, immediately after the effective date of the ~~merger;~~ merger.

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the ~~merger; and~~ merger.

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger."

SECTION 20. G.S. 55-11-03(i) reads as rewritten:

"(i) After a plan of merger or share exchange is authorized, ~~and at any time~~ but before the articles of merger or share exchange ~~are filed,~~ become effective, the ~~planned~~ plan of merger or share exchange (i) may be amended as provided in the plan of merger or share exchange, or (ii) may be ~~abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth~~ abandoned, subject to any contractual rights, as provided in the plan of merger or share exchange or, if ~~none is set forth, in the manner~~ there is no such provision, as determined by the board of ~~directors.~~directors without further shareholder action."

SECTION 21. G.S. 55-11-04 reads as rewritten:

"§ **55-11-04. Merger with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least ~~90~~ ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent ~~or subsidiary.~~ corporation unless the articles of incorporation of the parent corporation require approval of the shareholders or the plan of merger contains one or more amendments to the articles of incorporation of the parent corporation for which shareholder approval is required by G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation require approval of the shareholders of the subsidiary corporation. Subject to Article 9, a parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary corporation without approval of the board of directors or shareholders of the subsidiary ~~if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and G.S. 55-11-03.~~ corporation unless the articles of incorporation of the subsidiary corporation provide otherwise or the plan of merger contains one or more amendments to the articles of incorporation of the subsidiary corporation for which shareholder approval is required by G.S. 55-10-03. Except as otherwise provided in this subsection, the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this subsection.

(b) ~~The board of directors of the parent shall adopt a plan of merger that sets forth:~~

~~(1) The names of the parent and subsidiary; and~~

~~(2) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.~~

If a merger is consummated without approval of the subsidiary corporation's shareholders, the parent corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

~~(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.~~

~~(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.~~

~~(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the surviving corporation (except for amendments enumerated in G.S. 55-10-02).~~

(f) The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

SECTION 22. G.S. 55-11-05 reads as rewritten:

"§ **55-11-05. Articles of merger or share exchange.**

(a) After a plan of merger or a plan of share exchange ~~is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required,~~ for the acquisition of shares of a domestic corporation has been authorized as

required by this Chapter, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share ~~exchange setting forth:~~ exchange.

~~(1) The plan of merger or share exchange;~~

~~(2) If shareholder approval was not required, a statement to that effect;~~

~~(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was approved by the shareholders as required by this Chapter.~~

In the case of a merger, the articles of merger shall set forth (i) the name and state or country of incorporation of each merging corporation, (ii) the name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address, (iii) any amendments to the articles of incorporation of the surviving corporation provided in the plan of merger if the surviving corporation is a domestic corporation, and (iv) a statement that the plan of merger has been approved by each merging corporation in the manner required by law.

In the case of a share exchange, the articles of share exchange shall set forth (i) the name of the corporation whose shares will be acquired, (ii) the name and state or country of incorporation of the acquiring corporation, (iii) a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address if the acquiring corporation is not authorized to transact business or conduct affairs in this State, and (iv) a statement that the plan of share exchange has been approved by the corporation whose shares will be acquired and by the acquiring corporation in the manner required by law.

(a1) If the plan of merger or share exchange is amended after the articles of merger or share exchange have been filed but before the articles of merger or share exchange become effective and any statement in the articles of merger or share exchange becomes incorrect as a result of the amendment, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment to the articles of merger or share exchange correcting the incorrect statement. If the articles of merger or share exchange are abandoned after the articles of merger or share exchange are filed but before the articles of merger or share exchange become effective, the surviving or acquiring corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger or share exchange become effective an amendment reflecting abandonment of the plan of merger or share exchange.

(b) A merger or share exchange takes effect ~~upon the effective date of~~ when the articles of merger or share ~~exchange.~~ exchange become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger or share exchange pursuant to G.S. 55-11-07 or G.S. 55-11-09, references in subsections (a) and (b) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 23. G.S. 55-11-06 reads as rewritten:

"§ **55-11-06. Effect of merger or share exchange.**

(a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, or 55-11-09 takes effect:

(1) ~~Every other~~ Each merging corporation ~~party to the merger~~ merges into the surviving corporation and the separate existence of ~~every~~ each merging corporation except the surviving corporation ~~ceases;~~ ceases.

(2) The title to all real estate and other property owned by each merging corporation ~~party to the merger~~ is vested in the surviving corporation without reversion or ~~impairment;~~ impairment.

(3) The surviving corporation has all liabilities of each ~~corporation party to the merger;~~ merging corporation.

(4) A proceeding pending by or against any merging corporation ~~party to the merger~~ may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for ~~the~~ a merging corporation whose separate existence ~~ceased;~~ ceases in the merger.

(5) ~~The~~ If a domestic corporation survives the merger, its articles of incorporation ~~of the surviving corporation~~ are amended to the extent provided in the ~~plan~~ articles of ~~merger; and~~ merger.

(6) The shares of each merging corporation ~~party to the merger~~ that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into the right to receive cash or other property are thereupon converted, and the former holders of the shares are entitled only to the rights provided ~~in the articles of merger or to their rights under Article 13.~~ to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any right they may have under Article 13 of this Chapter.

(7) If a foreign corporation or foreign nonprofit corporation survives the merger, it is deemed:

a. To agree that it will promptly pay to dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

b. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation, (ii) of the rights of dissenting shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) of any obligation of the surviving foreign corporation or foreign nonprofit corporation arising from the merger.

c. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision b. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign nonprofit corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or

certified mail, return receipt requested, to the surviving foreign corporation or foreign nonprofit corporation. If the surviving foreign corporation or foreign nonprofit corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or, if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign nonprofit corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

The merger shall not affect the liability or absence of liability of any holder of shares in a merging corporation for any acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) When a share exchange for the acquisition of shares of a domestic corporation pursuant to G.S. 55-11-02 or G.S. 55-11-07 takes ~~effect, the~~ effect:

(1) The shares of ~~each~~ the acquired corporation are exchanged as provided in the ~~plan,~~ plan of share exchange, and the former holders of the shares are entitled only to the exchange rights provided in the ~~articles~~ plan of share exchange or ~~to their rights~~ any right they may have under Article ~~13.~~ 13 of this Chapter.

(2) If the acquiring corporation is not a domestic corporation, it is deemed to agree that it will promptly pay to dissenting shareholders of the acquired corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were an acquiring domestic corporation in the share exchange.

(3) If the acquiring corporation is not a domestic corporation, the acquiring corporation is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of the rights of dissenting shareholders of the acquired corporation under Article 13 of this Chapter and (ii) of any obligation of the acquiring corporation arising from the share exchange; and

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of an acquiring corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the acquiring corporation. If the acquiring corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest

document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the acquiring corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55-11-05(a).

(c) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09 or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (b) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 24. G.S. 55-11-07 reads as rewritten:

"§ **55-11-07. Merger or share exchange with foreign corporation.**

(a) One or more foreign corporations may merge ~~or enter into a share exchange~~ with one or more domestic corporations, and a foreign corporation may enter into a share exchange with a domestic corporation if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated ~~and each~~ and, to the extent applicable, each domestic or foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, if the corporation whose shares will be acquired is a ~~domestic~~ foreign corporation, ~~whether or not a~~ the share exchange is permitted by the law of the state or country under whose law the ~~acquiring~~ foreign corporation is ~~incorporated;~~ incorporated and the foreign corporation and the acquiring domestic corporation comply with that law in effecting the share exchange;

(3) The foreign corporation complies with G.S. 55-11-05 if it is the surviving corporation of the merger or acquiring corporation of the share ~~exchange and, if the foreign corporation is not authorized to transact business in this State, includes in the articles of merger or articles of share exchange filed pursuant to G.S. 55-11-05 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ exchange; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01 through G.S. 55-11-04 and, if it is the surviving corporation of the ~~merger or acquiring corporation of the share exchange,~~ merger with G.S. 55-11-05.

~~(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:~~

~~(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and~~

~~(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13.~~

~~Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk~~

~~authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to transact business in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or ~~otherwise.~~ otherwise, or the power of a domestic corporation to acquire all or part of the shares of one or more classes or series of a foreign corporation through a voluntary exchange or otherwise."

SECTION 25. G.S. 55-11-09 reads as rewritten:

"§ **55-11-09. Merger with nonprofit corporation.**

(a) One or more domestic or foreign nonprofit corporations may merge with one or more domestic corporations if:

(1) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03;

(2) In a merger involving one or more foreign nonprofit corporations, the merger is permitted by law of the state or country under whose law each foreign nonprofit corporation is incorporated ~~and each~~ and, to the extent applicable, each domestic corporation and each domestic or foreign nonprofit corporation complies with that law in effecting the merger;

(3) The domestic or foreign nonprofit corporation complies with G.S. 55-11-05 if it is the surviving ~~corporation and, in the case of a foreign nonprofit corporation not authorized to conduct affairs in this State, includes in the articles of merger filed pursuant to G.S. 55-11-05 a designation of the foreign nonprofit corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ corporation; and

(4) Each domestic corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04 and, if it is the surviving corporation, with G.S. 55-11-05.

~~(b) Upon the merger taking effect, if a foreign nonprofit corporation is the surviving corporation, then it is deemed:~~

~~(1) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and~~

~~(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 13 of this Chapter.~~

~~Service on the Secretary of State of any process authorized by this subsection shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process in~~

~~the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign nonprofit corporation. If the foreign nonprofit corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office as defined in G.S. 55A-1-40(20), or, if there is no mailing address for the principal office on file, its registered office. If the foreign nonprofit corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a domestic or foreign nonprofit corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

SECTION 26. G.S. 55-11-10 reads as rewritten:

"…

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c3) In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the

laws of the state or country governing the organization and internal affairs of that merging business entity.

(c4) After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

…."

SECTION 27. G.S. 55-11-10(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set ~~forth:~~ forth all of the following:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 28. G.S. 55-11-10(e)(5) reads as rewritten:

"(5) If a domestic corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 29. G.S. 55-11A-02 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
(2) The name of the resulting domestic corporation into which the converting business entity shall convert;
(3) The terms and conditions of the conversion; and
(4) The manner and basis for converting the interests in the converting business entity into shares, obligations, or other securities of the resulting domestic corporation or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the converting business entity or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

…."

SECTION 30. G.S. 55-11A-11 reads as rewritten:

"(a) The converting domestic corporation shall approve a written plan of conversion containing:

(1) The name of the converting domestic corporation;
(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
(3) The terms and conditions of the conversion; and
(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the converting domestic corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic corporation is a party, or any other agreement or document.

…."

SECTION 31. G.S. 55-14-03 is amended by adding a new subsection to read:

"(c) For purposes of this Chapter, a dissolved corporation is a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of a liquidation."

SECTION 32. G.S. 55-14-08(a) reads as rewritten:

"(a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or

(2) ~~If~~ Except as provided in G.S. 55-14-09(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of ~~his~~ the shareholder's pro rata share of the claim or the corporate assets distributed to ~~him~~ the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to ~~him.~~the shareholder."

SECTION 33. Article 14 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ **55-14-09. Court proceedings.**

(a) A dissolved corporation that has published a notice under G.S. 55-14-07 may file an application with the superior court of the county where the dissolved corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located for a determination of the amount and form of security to be provided for payments of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provisions need not be made for any claim that is or is reasonably anticipated to be barred under G.S. 55-14-07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and the claims shall not be enforced against a shareholder who received assets in liquidation."

SECTION 34. G.S. 55-14A-01(b) reads as rewritten:

"(b) Any articles of amendment, statement of change of registered office or registered agent, ~~certificate of reduction of capital, restated articles of incorporation,~~ articles of restatement, articles of merger or share exchange, articles of conversion, articles of dissolution, or any other document appropriate to complete any action permitted by this section shall be executed and filed in accordance with the provisions of this ~~act~~ Chapter on behalf of the corporation by such person or persons as may be authorized to take such action pursuant to subsection ~~(a)~~(a) of this section. The document shall set forth the statements required by this Chapter to be included in the document, except any statement that the action taken by the document was adopted by the incorporators or board of directors or was approved by the shareholders, and also shall set forth:

(1) The date of the court's order or decree approving the action.

(2) The title of the reorganization proceeding in which the order or decree was entered.

(3) A statement that the court had jurisdiction of the proceeding under a federal statute of the United States."

SECTION 35. G.S. 55-16-03 reads as rewritten:

"§ **55-16-03. Scope of inspection right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder ~~he represents.~~represented.

(b) The right to copy records under G.S. 55-16-02 includes, if reasonable, the right to receive copies ~~made by photographic, xerographic, or other means.~~ by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the shareholder. The charge may not exceed the estimated cost of ~~production or reproduction~~ production, reproduction, or transmission of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under G.S. 55-16-02(b)(3) by providing ~~him~~ the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand."

SECTION 36. Article 16 of Chapter 55 of the General Statutes is amended by adding the following new sections to read:

"§ **55-16-05. Inspection of records by directors.**

(a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The superior court of the county where the corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using

information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

"§ **55-16-06. Exception to notice requirements.**

(a) Whenever notice is required to be given under any provision of this Chapter to a shareholder, the notice shall not be required to be given if either of the following applies:

(1) Notice of two consecutive annual meetings, and all notices of meetings during the period between those two consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(2) All, but not less than two, payments of dividends on securities during a 12-month period, or two consecutive payments of dividends on securities during a period of more than 12 months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If a shareholder delivers to the corporation a written notice setting forth that shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated."

SECTION 37. G.S. 55-16-21 is repealed.

PART II. CONFORMING AMENDMENTS TO CHAPTER 55A, CHAPTER 57C, AND CHAPTER 59 OF THE GENERAL STATUTES.

SECTION 38. G.S. 55A-11-01 is amended by adding the following new subsection to read:

"(d) The provisions of the plan of merger, other than the provisions referred to in subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document."

SECTION 39. G.S. 55A-11-03(g) reads as rewritten:

"(g) After a merger is ~~adopted, and at any time before articles of merger are filed, the merger may be abandoned (subject to any contractual rights), without further action by members or other persons who approved the plan, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.~~adopted but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further action by the members or other persons who approved the plan of merger."

SECTION 40. G.S. 55A-11-04 reads as rewritten:

"§ **55A-11-04. Articles of merger.**

(a) After a plan of merger ~~is approved by the board of directors, and if required by G.S. 55A-11-03, by the members and any other persons,~~ has been authorized as required by this Chapter, the surviving corporation shall deliver to the Secretary of State for filing articles of merger setting forth:

(1) The ~~plan of merger;~~ name and state or country of incorporation of each merging corporation.

(2) ~~If approval by members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;~~ The name of the merging corporation that will survive the merger and, if the surviving corporation is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3) If ~~approval by members was required, a statement that the merger was approved by the members as required by this Chapter;~~ the surviving corporation is a domestic corporation, any amendment to the articles of incorporation of the corporation provided in the plan of merger.

(4) ~~If approval by some person or persons other than the members or the board was required pursuant to G.S. 55A-11-03(a)(3), a statement that the approval was obtained.~~ A statement that the plan of merger has been approved by each merging corporation in the manner required by law.

(a1) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving corporation shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

(b) A merger takes effect ~~upon the effective date of~~ when the articles of ~~merger.~~ merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsections (a) and (b) of this section to "corporation", other than references to "domestic corporation", shall include a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable."

SECTION 41. G.S. 55A-11-05 reads as rewritten:

"§ **55A-11-05. Effect of merger.**

When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

(1) ~~Every other~~ Each merging corporation ~~party to the merger~~ merges into the surviving corporation and the separate existence of ~~every~~ each merging corporation except the surviving corporation ~~ceases;~~ ceases.

(2) The title to all real estate and other property owned by each merging corporation ~~party to the merger~~ is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the ~~merger;~~ merger.

(3) The surviving corporation has all liabilities and obligations of each ~~corporation party to the merger;~~ merging corporation.

(4) A proceeding pending by or against any merging corporation ~~party to the merger~~ may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for ~~the~~ a merging corporation whose separate existence ~~ceased; and~~ ceases in the merger.

(5) ~~The~~ If a domestic corporation survives the merger, its articles of incorporation ~~and bylaws of the surviving corporation~~ are amended to the extent provided in the ~~plan~~ articles of merger.

(6) If a foreign corporation or a foreign business corporation survives the merger, it is deemed:

a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation and (ii) of any obligation of the surviving foreign corporation or foreign business corporation arising from the merger.

b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign business corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign corporation or foreign business corporation. If the surviving foreign corporation or foreign business corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign business corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55A-11-04(a)(2).

The merger shall not affect the liability or absence of liability of any member of a merging corporation for acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger.

(b) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsection (a) of this section to "corporation" shall include a domestic corporation, a foreign nonprofit corporation, a domestic business corporation, and a foreign business corporation, as applicable."

SECTION 42. G.S. 55A-11-06 reads as rewritten:

"§ **55A-11-06. Merger with foreign corporation.**

(a) Except as provided in G.S. 55A-11-02, one or more foreign ~~nonprofit~~ corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving corporation of the ~~merger and, if the foreign corporation is not authorized to conduct affairs in this State, includes in the articles of merger filed with the Secretary of State pursuant to G.S. 55A-11-04 a designation of the foreign corporation's mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;~~ merger; and

(3) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation of the merger, with G.S. 55A-11-04.

~~(b) Upon the merger taking effect, if the surviving corporation is a foreign corporation, it shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the merger. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign corporation. If the foreign corporation is authorized to conduct affairs in this State, the address for mailing shall be its principal office or, if there is no mailing address for the principal office on file, its registered office. If the foreign corporation is not authorized to conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (2) of subsection (a) of this section.~~

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 43. G.S. 55A-11-08 reads as rewritten:

"§ **55A-11-08. Merger with business corporation.**

(a) One or more domestic or foreign business corporations may merge with one or more domestic nonprofit corporations if:

(1) Each domestic business corporation complies with the applicable provisions of G.S. 55-11-01, 55-11-03, and 55-11-04;

(2) In a merger involving one or more foreign business corporations, the merger is permitted by the law of the state or country under whose law each foreign business corporation is incorporated and each foreign business corporation complies with that law in effecting the merger;

(3) The domestic or foreign business corporation complies with G.S. 55A-11-04 if it is the surviving ~~corporation and, in the case of a foreign business corporation not authorized to transact business in this State, includes in the articles of merger filed pursuant to G.S. 55A-11-04 a designation of the foreign business corporation's mailing address and a commitment to file with the Secretary of State a~~

~~statement of any subsequent change in its mailing address;~~ corporation; and

(4) Each domestic nonprofit corporation complies with the applicable provisions of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving corporation, with G.S. 55A-11-04.

~~(b) Upon the merger taking effect, if the surviving corporation is a foreign business corporation, it shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of a domestic nonprofit corporation party to the merger. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the foreign business corporation. If the foreign business corporation is authorized to transact business in this State, the address for mailing shall be its principal office as defined in G.S. 55-1-40(17) or, if there is no mailing address for the principal office on file, its registered office. If the foreign business corporation is not authorized to transact business in this State, the address for mailing shall be the mailing address designated pursuant to subdivision (3) of subsection (a) of this section.~~

(c) This section does not limit the power of a domestic or foreign business corporation to acquire all or part of the memberships of one or more classes of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 44. G.S. 55A-11-09 reads as rewritten:

"…

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic nonprofit corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic nonprofit corporation is a party, or any other agreement or document.

(c3) In the case of a merging domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any member of a merging domestic nonprofit corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of G.S. 55A-11-03, approval of the plan of merger by the domestic nonprofit corporation shall require the affirmative vote or written consent of the member. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c4) After a plan of merger has been approved by a domestic nonprofit corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors.

…."

SECTION 45. G.S. 55A-11-09(d) reads as rewritten:

"(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall

deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1."

SECTION 46. G.S. 55A-11-09(e)(5) reads as rewritten:

"(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 47. G.S. 57C-9A-02 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;

(1a) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

…."

SECTION 48. G.S. 57C-9A-11 reads as rewritten:

"(a) The converting domestic limited liability company shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited liability company;

(2) The name of the resulting business entity into which the domestic limited liability company shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic limited liability company into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic limited liability company or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic limited liability company is a party, or any other agreement or document.

…."

SECTION 49. G.S. 57C-9A-21 reads as rewritten:

"(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic limited liability company or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic limited liability company is a party, or any other agreement or document.

…."

SECTION 50. G.S. 57C-9A-22(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in

G.S. 57C-9A-21, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic limited liability company, any amendment to its articles of organization as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger."

SECTION 51. G.S. 57C-9A-23(a)(5) reads as rewritten:

"(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 52. G.S. 59-73.11 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic partnership into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion

sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

…."

SECTION 53. G.S. 59-73.21 reads as rewritten:

"(a) The converting domestic partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic partnership is a party, or any other agreement or document.

…."

SECTION 54. G.S. 59-73.31 reads as rewritten:

"(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger; and

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document.

…."

SECTION 55. G.S. 59-73.32(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective ~~become~~ an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting the abandonment of the plan of merger."

SECTION 56. G.S. 59-1051 reads as rewritten:

"(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic limited partnership into which the converting business entity shall convert;
(3) The terms and conditions of the conversion; and
(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the converting business entity or by any other person, group, or body.
(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

…."

SECTION 57. G.S. 59-1061 reads as rewritten:

"(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic limited partnership;
(2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
(3) The terms and conditions of the conversion; and
(4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
(2) A determination or action by the converting domestic limited partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic limited partnership is a party, or any other agreement or document.

…."

SECTION 58. G.S. 59-1071 reads as rewritten:

"(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic limited partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic limited partnership is a party, or any other agreement or document.

…."

SECTION 59. G.S. 59-1072(a) reads as rewritten:

"(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

~~(1) The plan of merger;~~

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal ~~affairs;~~ affairs.

(3) The name of the ~~surviving~~ merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing ~~address;~~ address.

(3a) If the surviving business entity is a domestic limited partnership, any amendment to its certificate of limited partnership as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by ~~law; and~~ law.

~~(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.~~

If the plan of merger is amended ~~or abandoned~~ after the articles of merger have been filed but before the articles of merger become ~~effective,~~ effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity promptly shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger ~~reflecting the amendment or abandonment of the plan of merger.~~ correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger."

SECTION 60. G.S. 59-1073(a)(5) reads as rewritten:

"(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the ~~plan~~ articles of merger;".

SECTION 61. The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 62. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 1st day of August, 2005.

Became law upon approval of the Governor at 3:10 p.m. on the 12th day of August, 2005.

S.B. 519 **Session Law 2005-269**

AN ACT TO PROVIDE FOR INTERSTATE SERVICES ON A RECIPROCAL BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 AND ARTICLE 13 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a)(34) reads as rewritten:

"(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a branch. With respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office."

SECTION 2. G.S. 53-301(a) is amended by adding the following new subdivision to read:

"(39a) "Registered office" means a registered office as described in G.S. 55D-30."

SECTION 3. G.S. 53-301(a)(54) reads as rewritten:

"(54) "Trust office" means an office, other than the principal office, ~~at~~ through which a trust institution acts as a ~~fiduciary.~~ fiduciary,

including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office."

SECTION 4. G.S. 53-306 reads as rewritten:

"§ **53-306. Trust business of out-of-state trust institution.**

An out-of-state trust institution that establishes or acquires and maintains one or more trust offices or representative trust offices in this State under the provisions of this Part or that maintains one or more branches in this State may, subject to the provisions of this Part, conduct any activity ~~at~~ through such a trust office, representative trust office, or branch that a State trust company or a State bank is authorized to conduct ~~at~~ through a trust office, representative trust office, or branch under the laws of this State."

SECTION 5. G.S. 53-307 reads as rewritten:

"§ **53-307. Trust business of foreign trust institution.**

A foreign trust institution that establishes or acquires and maintains one or more trust offices in this State under the provisions of this Part may, subject to the provisions of this Part, also establish or acquire one or more representative trust offices and conduct any activity ~~at~~ through the trust offices or representative trust offices that a State trust company is authorized to conduct ~~at~~ through trust offices or representative trust offices under the laws of this State."

SECTION 6. G.S. 53-310 reads as rewritten:

"§ **53-310. Offices of State trust companies.**

(a) A State trust company may engage in trust business or trust marketing ~~at~~ through its principal office and ~~at~~ through each trust office as permitted by this Part.

(b) A State trust company may engage in trust marketing ~~at~~ through a representative trust office as permitted by this Part.

(c) A State trust company may engage in trust business and trust marketing ~~in~~ through out-of-state trust offices or representative trust offices to the same extent permitted for trust institutions located in the host state ~~in~~ through which those out-of-state trust offices or representative trust offices are located, subject to the laws of this State and as provided by rules, orders, or declaratory rulings of the Commissioner."

SECTION 7. G.S. 53-314 reads as rewritten:

"§ **53-314. Trust business ~~at~~ through a branch or trust office.**

An out-of-state trust institution may engage in trust business in this State only if it (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to maintain a trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the date of enactment of this Article, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders, or (iii) is a depository institution that maintains a branch in this State."

SECTION 8. G.S. 53-317 reads as rewritten:

"§ **53-317. Requirement of notice.**

Before establishing or acquiring and maintaining a trust office in this State, an out-of-state trust institution shall provide, or cause its home state regulator to provide, notice to the Commissioner, in the form required by the Commissioner, along with copies of any applications, notices, or similar filings made with the home state regulator regarding the trust office. The notice shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each trust office in this State;

(3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;

(4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly-authorized committee thereof) authorizing the trust office; and

(5) Payment of any fee set by rule."

SECTION 9. G.S. 53-318(a) reads as rewritten:

"(a) The out-of-state trust institution may commence business in this State ~~at~~ through the trust office on the sixty-first day following the date the Commissioner receives the notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving the notice:

(1) Specifies an earlier or later date for commencing business,

(2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or

(3) Disapproves the proposed trust office."

SECTION 10. G.S. 53-319(b) reads as rewritten:

"(b) An out-of-state trust institution that does not maintain a trust office in this State shall file a notice with the Commissioner, in the form required by the Commissioner, before establishing or acquiring a representative trust office in this State. The notice shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each representative trust office in this State;

(3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;

(4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly authorized committee thereof) authorizing the representative trust office;

(5) The proposed location of each proposed representative trust office; and

(6) Payment of any fee set by rule."

SECTION 11. G.S. 53-320(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by an out-of-state trust institution to determine whether these activities are being conducted ~~the trust office or representative trust office is being operated~~ in compliance with the laws of this State

and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations."

SECTION 12. G.S. 53-321(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That activities of a trust office maintained by an out-of-state trust institution in this State ~~is being operated~~ are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the out-of-state trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office in this State; or

(2) That an out-of-state trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the trust office or the out-of-state trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this State."

SECTION 13. G.S. 53-322 reads as rewritten:

"§ **53-322. Notice of transactions that cause a change in control.**

Each out-of-state trust institution that maintains a trust office or representative trust office in this State, or the home state regulator of the trust institution, shall give at least 30 days' notice or, in the case of an emergency ~~transaction,~~ transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable, to the Commissioner of:

(1) Any merger, consolidation, share exchange, or other transaction that would cause a change in control of an out-of-state trust institution (i) that would be subject to Subpart D of Part 3 of this Article if the out-of-state trust institution were a State trust company or (ii) is required to be filed with any bank supervisory agency;

(2) Any transfer of all or substantially all of the accounts or account assets of the out-of-state trust institution to another person; or

(3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

SECTION 14. G.S. 53-323 reads as rewritten:

"§ **53-323. Foreign trust institution application for trust office or representative trust office.**

Before establishing or acquiring and maintaining a trust office in this State, a foreign trust institution shall make application to the Commissioner for permission to do so in the English language and in the form required by the Commissioner. The application shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the foreign trust institution with any applicable requirements of its home country regulator for maintenance of capital, for expansion within the

borders of its home country or within a political subdivision of its home country, and for acquiring or establishing and maintaining the trust office in this State;

(3) Evidence satisfactory to the Commissioner that the foreign trust institution is not in a hazardous condition;

(4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the foreign trust institution, or similar governing body or a duly-authorized committee thereof, authorizing the trust office; and

(5) Payment of any fee set by rule.

The Commissioner may require any materials not written in the English language to be translated, and the translation certified in a manner satisfactory to the Commissioner, at the expense of the foreign trust institution."

SECTION 15. G.S. 53-324(a) reads as rewritten:

"(a) A foreign trust institution may engage in trust business in this State only on approval by the Commissioner of an application described in G.S. 53-323, which may be given upon conditions required by the ~~the~~ Commissioner for prudential reasons consistent with any applicable international agreements to which the United States is a party."

SECTION 16. G.S. 53-326(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by a foreign trust institution to determine whether ~~the trust office or representative trust office is being operated~~ these activities are being conducted in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations."

SECTION 17. G.S. 53-327(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That activities of a trust office or representative trust office maintained by a foreign trust institution in this State ~~is being operated~~ are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the foreign trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office or representative trust office in this State; or

(2) That a foreign trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the foreign trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the foreign trust institution from engaging in trust business or trust marketing in this State."

SECTION 18. G.S. 53-328 reads as rewritten:

"§ **53-328. Notice of transactions that cause a change in control.**

Each foreign trust institution that maintains a trust office or representative trust office in this State, or the home country regulator of the foreign trust institution, shall give at least 30 days' notice (or, in the case of an emergency ~~transaction,~~ transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable) to the Commissioner, in the form required by the Commissioner, of:

(1) Any merger, consolidation, share exchange, or other transaction that would cause a change of control of a foreign trust institution:
   a. That would be subject to Subpart D of Part 3 of this Article if the foreign trust institution were a State trust company; or
   b. Is required to be filed with any bank supervisory agency;
(2) Any transfer of all or substantially all of the accounts or account assets of the foreign trust institution to another person; or
(3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

SECTION 19. Article 13 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ **53-158.1. Scope of preferred stock provisions.**

All provisions of this Article relating to preferred stock apply only to the emergency issuance of preferred stock, pursuant to the provisions of G.S. 53-154, by a bank in conservatorship. The provisions of this Article do not affect the issuance or treatment of preferred stock, or other shares authorized by Chapter 55 of the General Statutes in accordance with G.S. 53-10(a) and G.S. 53-135, provided the issuance of preferred stock or any shares other than common capital stock shall have been approved by the Commissioner of Banks."

SECTION 20. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of August, 2005.

Became law upon approval of the Governor at 4:09 p.m. on the 12th day of August, 2005.

S.B. 907 **Session Law 2005-270**

AN ACT REQUIRING THE SECRETARY OF ADMINISTRATION TO ADOPT RULES AND PROCEDURES TO CERTIFY HISTORICALLY UNDERUTILIZED BUSINESSES AND TO MAINTAIN A DATABASE OF THE BUSINESSES CERTIFIED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-48 is amended by adding the following new subsection to read:

"§ **143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.**

…

(d1) The Secretary of Administration shall adopt rules and procedures for: (i) the certification of a business under this section as a historically underutilized business; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification under this section."

SECTION 2. G.S. 143-128.3 is amended by adding the following new subsection to read:

"§ **143-128.3. Minority business participation administration.**

…

(e1) The Secretary shall adopt rules and procedures for: (i) the certification of a minority business contractor, as defined in G.S. 143-128.2(g), as a historically underutilized business; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses. The database shall be created and maintained by the Department of Administration, Office of Historically Underutilized Business, and shall include the necessary procedures and rules for certification as a historically underutilized business."

SECTION 3. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-128.4. Historically underutilized business defined.**

(a) As used in this Chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

(1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.

(2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

(1) Black. – A person having origins in any of the black racial groups of Africa.

(2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.

(3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.

(4) American Indian. – A person having origins in any of the original Indian peoples of North America.

(5) Female.

(6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.

(7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637."

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

In the General Assembly read three times and ratified this the 4th day of August, 2005.

Became law upon approval of the Governor at 4:19 p.m. on the 12th day of August, 2005.

S.B. 408 **Session Law 2005-271**

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO IDENTIFY RESEARCH-BASED METHODS TO REDUCE THE DROPOUT RATE AND THE NUMBER OF SUSPENDED STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. The State Board of Education shall identify research-based methods to reduce the dropout rate and the number of suspended students, especially in high-poverty schools with diverse student populations. As part of its study, the State Board shall review the research for best practices, effective policies, and model programs in areas such as (i) academic rigor in the curriculum, (ii) early identification of at-risk students, (iii) effective supplemental services for at-risk students, (iv) school size, (v) school climate, and (vi) adolescent literacy programs, as they relate to a reduction in the dropout rate and the number of suspended students.

The State Board shall report its findings to the Joint Legislative Education Oversight Committee by January 2006.

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

In the General Assembly read three times and ratified this the 3rd day of August, 2005.

Became law upon approval of the Governor at 4:46 p.m. on the 12th day of August, 2005.

H.B. 1466 **Session Law 2005-272**

AN ACT TO AMEND THE OFFENSE OF EXPLOITATION OF AN ELDER ADULT OR DISABLED ADULT AND TO INCREASE THE PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-32.3(c) is repealed.

SECTION 2. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-112.2. Exploitation of an elder adult or disabled adult.**

(a) The following definitions apply in this section:

(1) Disabled adult. – A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(2) Elder adult. – A person 60 years of age or older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.

(b) It is unlawful for a person: (i) who stands in a position of trust and confidence with an elder adult or disabled adult, or (ii) who has a business relationship with an elder adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or

disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder adult or disabled adult.

(c) It is unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder adult or disabled adult. This subsection shall not apply to a person acting within the scope of their lawful authority as the agent for the elder adult or disabled adult.

(d) A violation of subsection (b) of this section is punishable as follows:

(1) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class F felony.

(2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class G felony.

(3) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at less than twenty thousand dollars ($20,000), then the offense is a Class H felony.

(e) A violation of subsection (c) of this section is punishable as follows:

(1) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class G felony.

(2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class H felony.

(3) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at less than twenty thousand dollars ($20,000), then the offense is a Class I felony."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 2nd day of August, 2005.

Became law upon approval of the Governor at 6:20 p.m. on the 12th day of August, 2005.

H.B. 1297 **Session Law 2005-273**

AN ACT TO PROVIDE QUALIFIED IMMUNITY FROM CIVIL LIABILITY FOR ANY VOLUNTEER WHO SERVES IN A MEDICAL RESERVE CORPS UNIT OR ON A COMMUNITY EMERGENCY RESPONSE TEAM WHILE ENGAGED IN PROVIDING EMERGENCY SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-539.10 reads as rewritten:

"§ **1-539.10. Immunity from civil liability for volunteers.**

(a) A volunteer who performs services for a charitable organization or a volunteer engaged in providing emergency services is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:

(1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and

(2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.

(3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.

(b) To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.

(c) Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services."

SECTION 2. G.S. 1-539.11 reads as rewritten:

"§ **1-539.11. Definitions.**

As used in this Article:

(1) "Charitable Organization" means an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward and is exempt from taxation under either G.S. 105-130.11(a)(3) or G.S. 105-130.11(a)(5) or Section 501(c)(3) of the Internal Revenue Code of 1954.

(1a) "Emergency services" means the preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting from natural or man-made disasters and all other activities necessary or incidental to the preparation for and carrying out of these functions. These functions include firefighting services, police services, medical and health services, rescue services, engineering services, land surveying services, warning services and communications, radiological, chemical and other special weapons defense services, evacuation of persons from stricken areas, emergency welfare services, including providing emergency shelter, emergency transportation, and emergency resource management services, existing or properly assigned plant protection services, temporary restoration of public utility services, services performed as a

function of a Medical Reserve Corps (MRC) unit or a Community Emergency Response Team (CERT), and other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.

(2) "Volunteer" means an individual, serving as a direct service volunteer performing services for a charitable, nonprofit organization, who does not receive compensation, or anything of value in lieu of compensation, for the services, other than reimbursement for expenses actually ~~incurred.~~ incurred or any person providing emergency services without any financial gain."

SECTION 3. This act becomes effective October 1, 2005, and applies to causes of action that arise on or after that date.

In the General Assembly read three times and ratified this the 1st day of August, 2005.

Became law upon approval of the Governor at 6:22 p.m. on the 12th day of August, 2005.

S.B. 517 **Session Law 2005-274**

AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a) is amended by adding the following new subdivisions to read:

"(3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.

…

(49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.

(49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.

…."

SECTION 2. Article 24 of Chapter 53 of the General Statutes is amended by adding the following new Part to read:

"Part 7. Affiliate Transfers; Agent Appointments.

"**§ 53-420. Affiliate transfers authorized; procedure.**

(a) A trust institution may make an affiliate transfer of one or more accounts subject to the provisions of this Part unless the provisions governing the account explicitly provide that an affiliate transfer shall not be made.

(b) The affiliate transfer shall be made pursuant to a written agreement between the transferring trust institution and the transferee trust institution.

(c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the transferring trust institution shall give written notice of the proposed affiliate transfer to all clients and other persons to whom the transferring trust institution last sent reports or statements for the account or to whom the next regular report or statement would be sent. The notice shall include the following information:

(1) A brief description of the proposed affiliate transfer.

(2) The client's right to object in writing to the affiliate transfer, and the physical and mailing addresses to which the written objection may be sent; the transferring trust institution also may provide electronic mail or facsimile addresses, or both, as additional methods for giving written notice of objection.

(3) The date upon which the affiliate transfer is proposed to be effective.

(4) The identity, mailing address, and telephone number of one or more employees of the transferee trust institution who can respond to inquiries if the affiliate transfer is complete.

(5) The identity, mailing address, and telephone number of one or more employees of the transferring trust institution who can respond to inquiries about the proposed affiliate transfer.

(d) Notices shall be sent to the addresses for clients or their representatives on record with the transferring trust institution and shall be effective upon receipt. Notices shall be deemed received three days after they have been posted for mailing with the United States Postal Service or deposited for delivery with a reputable courier service, with all postage or delivery charges prepaid.

"**§ 53-421. Objection to affiliate transfer.**

If a client, or a person acting on behalf of the client, delivers a written objection to the affiliate transfer to the transferring trust institution at anytime prior to the date of the affiliate transfer, the transferring trust institution shall exclude that account from the affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer shall not affect the right of the transferring trust institution to continue to administer the account or to seek to transfer the account pursuant to the documents and law governing the account.

"**§ 53-422. Effect of affiliate transfer.**

(a) Following an affiliate transfer, the transferee trust institution shall have all of the rights, powers, privileges, appointments, accounts, and designations of the transferring trust institution and shall be deemed successor to the transferring trust institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document related to the account.

(b) Following an affiliate transfer, the transferee trust institution is responsible for the performance of all duties, responsibilities, and obligations related to an account subject to the affiliate transfer.

(c) The affiliate transfer does not limit the transferring trust institution's liability for any of its acts as fiduciary.

(d) Unless the affiliate transfer is authorized by the documents governing the account, the transferring trust institution remains liable and responsible, while affiliated with the transferee trust institution, for the transferee trust institution's administration of accounts subject to an affiliate transfer. For purposes of this subsection, an affiliate transfer of an account made in reliance on subsection (e) of this section shall not be deemed to be authorized by the documents governing the account.

(e) Except as explicitly provided in provisions or laws governing accounts:

(1) Qualifications for administration such as capital, assets, assets under management, or similar standards set forth in documents or laws governing the account may be satisfied by the combined financial resources of the transferring trust institution and the transferee trust institution.

(2) Standards relating to the location or charter of the trust institution administering the account may be satisfied by the transferring trust institution or the transferee trust institution.

(f) Nothing in this Part shall be construed to impair any right of a trust institution to resign from administration of an account, or the right of a trust institution or a person interested in the account to seek the appointment of a replacement.

(g) Neither the rights of creditors to nor any liens upon the property held in an account shall be impaired by an affiliate transfer.

(h) Any claim or proceeding by or against the transferring trust institution pending at the time of the affiliate transfer may proceed as if the affiliate transfer had not taken place.

"§ **53-423. Trust institution as agent.**

A trust institution may appoint another trust institution that is its affiliate as its agent for the performance of acts, obligations, and responsibilities with respect to any account. In that event, the trust institution shall remain fully responsible and liable with respect to all actions of the affiliated trust institution as if those actions were performed by the trust institution. Except as explicitly provided in documents or laws governing an account, appointment of an affiliate agent is not:

(1) An impermissible delegation of responsibility or duty by the appointing trust institution.

(2) A transfer or relinquishment of account powers by the appointing institution.

(3) A resignation or disqualification from the account by the appointing trust institution.

"§ **53-424. Construction.**

(a) Except as expressly provided in this Part, nothing in this Part shall be construed to amend or modify the laws of this State governing the establishment or administration of accounts or the actions of trust institutions.

(b) An affiliate transfer is not, in itself, a transfer of substantially all of the transferring trust institution's assets and liabilities.

(c) Except as explicitly provided by the documents governing the account, neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be subject to G.S. 36A-13 or any other provision requiring court approval for removal of fiduciary funds from this State.

(d) Except as explicitly provided by the documents governing the account, an affiliate transfer, but not an agency appointment, shall be subject to any provision of law requiring notice of a transfer of the principal place of administration of the account. The manner or timing of a notice required under G.S. 53-420(c) may be altered to comport with any provision of law requiring notice of a transfer of the principal place of administration of the account."

SECTION 3. Effective January 1, 2006, G.S. 53-424(c) as enacted by Section 2 of this act reads as rewritten:

"(c) Except as explicitly provided by the documents governing the account, neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be subject to ~~G.S. 36A-13 or any other~~ any provision of law requiring court approval for removal of fiduciary funds from this State."

SECTION 4. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 3rd day of August, 2005.

Became law upon approval of the Governor at 6:29 p.m. on the 12th day of August, 2005.

H.B. 253 **Session Law 2005-275**

AN ACT TO AUTHORIZE THE NORTH CAROLINA TURNPIKE AUTHORITY TO ADOPT TRANSPORTATION CORRIDOR OFFICIAL MAPS, TO INCREASE THE NUMBER OF PROJECTS THE AUTHORITY MAY UNDERTAKE FROM THREE TO NINE, TO AUTHORIZE USE OF INCENTIVES IN TURNPIKE CONTRACTS, TO REQUIRE THE AUTHORITY TO CONTRACT WITH A SINGLE FIRM TO DESIGN, ACQUIRE PERMITS FOR, AND CONSTRUCT A DESCRIBED BRIDGE, TO AMEND THE AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION TO ISSUE A PRIVATE PILOT TOLL PROJECT LICENSE, TO REQUIRE AN EIGHTEEN-HOUR HURRICANE EVACUATION STANDARD TO BE USED FOR BRIDGE OR HIGHWAY CONSTRUCTION, AND TO EXPEDITE CONSTRUCTION OF A REPLACEMENT FOR THE HERBERT C. BONNER BRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.50 reads as rewritten:

"§ **136-44.50. Transportation corridor official map act.**

(a) A transportation corridor official map may be adopted or amended by any of the following:

(1) The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.

(2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

(4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

No transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the

map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.

c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.

(2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the "grantor" index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an

abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a transportation corridor official map or amendments to a transportation corridor official map. When a city prepares a transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the two-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term "amendment" for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, the North Carolina Turnpike Authority, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, the North Carolina Turnpike Authority, or deletion of the corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

(f) The term "transportation corridor" as used in this Article does not include bikeways or greenways."

SECTION 2. G.S. 136-89.183 reads as rewritten:

"§ **136-89.183. Powers of the Authority.**

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To study, plan, develop, and undertake preliminary design work on up to nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to ~~To study, plan, develop,~~ design, establish, purchase, construct, operate, and maintain ~~three~~ up to nine Turnpike Projects. ~~Projects, either on its own initiative or at the request of the Board of Transportation.~~ One of the Turnpike Projects shall be located in whole or in part in a county with a population equal to or greater than 650,000 persons, according to the latest decennial census, and one Turnpike Project shall be located in a county or counties that each have a population of fewer that 650,000 persons, according to the latest decennial census. One of the Turnpike Projects shall be a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia. A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project.

~~(3) To study, plan, develop and undertake preliminary design work on three Turnpike Projects, in addition to the three turnpike projects described in subdivision (2) of this subsection, either on its own initiative or at the request of the Board of Transportation. The Authority shall take no further action on a project described by this subdivision unless authorized to do so by Statute.~~

(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property, including the power to acquire property by eminent domain pursuant to G.S. 136-89.184.

(5) To fix, revise, charge, and collect tolls and fees for the use of the Turnpike Projects. Prior to the effective date of any toll or fee for use of a Turnpike Facility, the Authority shall submit a description of the proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review.

(6) To issue bonds or notes of the Authority as provided in this Article.

(7) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with the Turnpike System.

(8) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(9) To apply for, accept, and administer loans and grants of money or real or personal property from any federal agency, the State or its political subdivisions, local governments, or any other public or private sources available.

(10) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article, in accordance with the review and comment requirements of G.S. 136-89.182(j).

(11) To utilize employees of the Department; to contract for the services of consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants; to employ administrative staff as may be required in the judgment of the Authority; and to fix and pay fees or compensation to the Department, contractors, and administrative employees from funds available to the Authority.

(12) To receive and use appropriations from the State and federal government.

(13) To adopt procedures to govern its procurement of services and delivery of Turnpike Projects.

(14) To perform or procure any portion of services required by the Authority.

(15) To use officers, employees, agents, and facilities of the Department for the purposes and upon the terms as may be mutually agreeable.

(16) To contract for the construction, maintenance, and operation of a Turnpike Project.

(17) To enter into partnership agreements, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project.

(18) To utilize incentives in any contract for development or construction of a Turnpike Project, in order to promote expedited delivery of the project.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority Board present and voting, a quorum having been established. Once a policy is established, the Authority Board shall communicate it to the Executive Director or the Executive Director's designee, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority Board shall have the responsibility or authority to give operational directives to any employee of the Authority other than the Executive Director or the Director's designee."

SECTION 3. Article 6H of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ **136-89.183A. Accelerated Pilot Toll Bridge Project.**

(a) Contract to Construct Accelerated Pilot Toll Bridge Project. – The Authority shall contract with a single private firm to design, obtain all necessary permits for, and construct the toll bridge described in G.S. 136-89.183(a)(2), a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, in order to provide accelerated, efficient, and cost-effective completion of the project.

(b) Preconstruction Participation. – In addition to the authority granted by G.S. 136-89.191, the Department shall participate in the cost of preconstruction activities related to the project described in this section, if requested by the Authority.

(c) Report on Project. – The Authority shall report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated pilot toll bridge project described in this section."

SECTION 4. G.S. 136-89.172 reads as rewritten:

"§ **136-89.172. Private Pilot Toll Project.**

(a) Authority to License. – The Department of Transportation is authorized to issue a license to an applicant to finance, design, construct, maintain, improve, own, or operate solely from private resources one pilot toll transportation project within the State of North Carolina. Any license authorized by this section must be issued on or before July 1, ~~2003.~~2009.

(b) Requirement for Finding of Need. – Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is in the public interest.

(c) Submission of Financial Data. – A person applying for a license to construct a project under this section shall submit detailed financial data to the Department concerning the ability of applicant to finance the proposed project. The Department shall independently analyze the data submitted for each project proposal.

(d) License Period. – A license issued under this section shall not exceed 50 years from beginning of the operations of the road or bridge. A license may be renewed for an additional 50-year term at the discretion of the Department and in conformity with this Article.

(e) State Use for Other Purposes. – A license issued pursuant to this section shall reserve unto the State or its designee the authority to enter and utilize the project right-of-way for other transportation or utility-related purposes, as long as those purposes do not interfere with the use by the licensee.

(f) Terms of License. – Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and shall include, in addition to any other requirements:

(1) Provisions establishing minimum design and construction standards for the project.

(2) Provisions establishing minimum maintenance standards for the project and the responsibility for such maintenance.

(3) Provisions requiring that appropriate traffic signs and other traffic control devices be erected and maintained on the project.

(4) Provisions establishing the rights and duties of the parties regarding infrastructure improvements and connections between the project and the State highway system.

(5) Provisions regarding any type of access control, if any, that may be required for the project.

(6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public.

(7) Provisions requiring that the State of North Carolina, its agencies, officials, and employees be indemnified and held harmless by the licensee for any liability incurred on the project in connection with project construction, maintenance, or operation.

(8) Provisions concerning location of the project.

(g) Department Powers. – The Department may exercise any power possessed by it with respect to the development and construction of State transportation projects to facilitate the development and construction of transportation projects pursuant to this Article.

(h) Acquisition of Project Property. – A person licensed to construct a project under this section shall make all reasonable efforts to acquire all right-of-way interests required for the project through private negotiation. The Department is authorized to exercise its power of eminent domain to acquire property rights necessary for construction and maintenance of the project only as to those property interests that cannot be acquired by the licensee at a reasonable price through private negotiation, and only as required to control access to the project. A licensee requesting that the Department exercise its power of eminent domain shall be required to reimburse the Department in the full amount of its costs incurred in acquiring the necessary property interests for the private portion of the project, including any negotiated settlement or jury verdict, and any attorneys' fees that may be awarded. The acquisition of property interests necessary for inclusion in a project licensed under this section is hereby declared to be for a public transportation purpose.

(i) Transfer of Department Property to Licensee. – Notwithstanding the provisions of G.S. 136-19, should the Department determine that a licensed project require property interests held by the Department, such interests as the Department determines to be necessary may be conveyed to the licensee for fair market value.

(j) Applicability of Other Laws. – For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4). A

licensee under this section shall endeavor to comply with the provisions of G.S. 136-28.4 concerning participation by disadvantaged businesses.

(k) Applicability of Motor Vehicle Laws. – Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(l) Exclusive License. – Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(m) Definitions. – The following definitions apply as used in this section:

(1) "Person" means any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity other than the State or its agencies, institutions, or political subdivisions.

(2) "Project" means a ~~privately constructed, maintained, and operated toll highway, road, bridge, or other transportation-related facility.~~ bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia.

(3) "Licensee" means a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(n) Report. – The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article."

SECTION 5. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-102.7. Hurricane evacuation standard.**

(a) Evacuation Standard. – The hurricane evacuation standard to be used for any bridge or highway construction project pursuant to this Chapter shall be no more than 18 hours, as recommended by the State Emergency Management officials."

SECTION 6.(a) The General Assembly finds that:

(1) The existing Herbert C. Bonner Bridge spanning Oregon Inlet, an essential link in the State's transportation network, is in imminent danger of failure and possible collapse due to its low stability rating and substandard condition.

(2) The Herbert C. Bonner Bridge, which was opened to traffic in 1963, has extended beyond its original projected life span, and that Department of Transportation engineering reports indicated in 1993 that the bridge had only six years of safe usage left.

(3) The condition of the Herbert C. Bonner Bridge poses significant imminent threats to public health and safety to thousands of residents and visitors at all times, and jeopardizes emergency management operations and evacuations during times of natural disasters.

(4) The condition of the Herbert C. Bonner Bridge also threatens the economic stability of the tourist economy of the region, tourism being the region's main industry, and also threatens the viability of Oregon

Inlet as the region's main transportation corridor for commercial and recreational fishing industries.

(5) The replacement of the Herbert C. Bonner Bridge has been studied for over a decade, during which time the condition of the bridge has continued to deteriorate at an alarming rate.

(6) Failure or collapse of the Herbert C. Bonner Bridge will result in catastrophic harm to public health, safety, and welfare, the potential harm to and loss of lives, and loss of access to the Pea Island National Wildlife Refuge, which is one of our country's most important natural wildlife and wildfowl habitats.

(7) Replacement of the Herbert C. Bonner Bridge is critical to protect public health, safety, and welfare, and maintain necessary transportation access for emergency management and economic purposes.

(8) Replacement of the Herbert C. Bonner Bridge must occur as soon as is practicable, and authorization must be given to the Department of Transportation to pursue expedited permitting, design, and construction to ensure that the replacement bridge is open to the public before the existing bridge fails or collapses.

SECTION 6.(b) Article 6H of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-89.183B. Accelerated Herbert C. Bonner Bridge Replacement Project.**

(a) Contract for Accelerated Construction of the Herbert C. Bonner Replacement Bridge Project. – The Department of Transportation shall contract with a single private firm to design, obtain all necessary permits for, and construct a replacement bridge for the Herbert C. Bonner Bridge at Oregon Inlet, in order to provide accelerated, efficient, and cost-effective completion of the project.

(b) Replacement Bridge; Termini. – The bridge constructed pursuant to this section shall be a replacement bridge, with north and south termini located in general proximity to the termini of the existing Herbert C. Bonner Bridge.

(c) Department to Report on Project. – The Department shall prepare a request for proposals from private firms to complete the bridge project described in this section, and submit the request for proposals to the Joint Legislative Transportation Oversight Committee for review and comment, within 90 days after the effective date of this act. The Department shall issue the request for proposals to the public 30 days after submittal to the Committee for review. The Department shall report to the Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated bridge project described in this section."

SECTION 6.1. Lanny Wilson of New Hanover County is appointed to the North Carolina Turnpike Authority for a term expiring on January 14, 2009.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of August, 2005.

Became law upon approval of the Governor at 6:30 p.m. on the 12th day of August, 2005.

S.B. 622 **Session Law 2005-276**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the Executive Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2005."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – General Fund	**2005-2006**	**2006-2007**
EDUCATION		
Community Colleges System Office	$ 787,685,943	$ 767,295,886
Department of Public Instruction	6,607,998,945	6,579,807,097
University of North Carolina - Board of Governors		
Appalachian State University	97,708,514	98,114,232
East Carolina University		
Academic Affairs	165,132,181	168,098,010
Health Affairs	45,624,110	45,671,394
Elizabeth City State University	28,376,210	28,173,367
Fayetteville State University	42,540,261	42,778,425
North Carolina Agricultural and Technical State University	76,497,695	76,533,207
North Carolina Central University	59,223,437	58,883,106
North Carolina School of the Arts	21,173,905	20,698,614

North Carolina State University		
Academic Affairs	299,773,341	304,775,818
Agricultural Extension	36,389,142	35,668,328
Agricultural Research	45,200,460	45,281,347
University of North Carolina at Asheville	29,211,816	29,705,695
University of North Carolina at Chapel Hill		
Academic Affairs	212,164,735	220,475,219
Health Affairs	162,938,570	164,709,561
Area Health Education Centers	44,743,422	44,743,422
University of North Carolina at Charlotte	125,613,588	132,319,883
University of North Carolina at Greensboro	112,318,841	113,459,797
University of North Carolina at Pembroke	41,277,854	41,754,482
University of North Carolina at Wilmington	74,161,294	76,371,666
Western Carolina University	71,404,729	71,990,778
Winston-Salem State University	48,726,028	48,658,641
General Administration	48,804,831	48,890,151
University Institutional Programs	24,610,415	28,278,415
Related Educational Programs	112,937,512	114,905,552
North Carolina School of Science and Mathematics	14,555,420	14,513,392
UNC Hospitals at Chapel Hill	44,944,579	43,944,579
Total University of North Carolina – Board of Governors	$ 2,086,052,890	$ 2,119,397,081

HEALTH AND HUMAN SERVICES

Department of Health and Human Services		
Office of the Secretary	$ 113,855,919	$ 118,880,919
Division of Aging	29,975,639	29,495,139
Division of Blind Services/Deaf/HH	9,676,797	9,681,220
Division of Child Development	268,350,017	267,356,799
Division of Education Services	33,852,267	34,281,895
Division of Facility Services	13,608,838	15,959,466
Division of Medical Assistance	2,509,772,054	2,751,209,159
Division of Mental Health	603,315,155	602,556,655
NC Health Choice	68,169,765	51,882,902
Division of Public Health	152,391,232	150,814,496
Division of Social Services	188,512,693	190,679,285
Division of Vocational Rehabilitation Services	41,755,526	42,142,193
Total Health and Human Services	$ 4,033,235,902	$ 4,264,940,128

NATURAL AND ECONOMIC RESOURCES

Department of Agriculture and Consumer Services	$ 52,040,846	$ 51,032,884
Department of Commerce		
Commerce	49,686,999	36,728,265
Commerce State-Aid	26,512,085	11,722,085
NC Biotechnology Center	12,083,395	10,583,395

Rural Economic Development Center	25,277,607	25,052,607
Department of Environment and Natural Resources	177,197,119	167,451,089
Department of Labor	14,419,553	14,434,925
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,029,924,421	$ 1,048,492,502
Department of Crime Control and Public Safety	34,793,934	35,153,488
Judicial Department	342,604,760	345,726,582
Judicial Department - Indigent Defense	94,037,973	88,648,414
Department of Justice	77,322,567	78,697,271
Department of Juvenile Justice and Delinquency Prevention	140,377,666	138,873,166
GENERAL GOVERNMENT		
Department of Administration	$ 62,039,261	$ 58,818,473
Office of Administrative Hearings	2,987,410	2,969,712
Department of State Auditor	10,850,737	10,840,918
Office of State Controller	10,043,268	10,044,511
Department of Cultural Resources		
Cultural Resources	73,433,514	62,917,147
Roanoke Island Commission	1,783,374	1,783,374
State Board of Elections	5,107,543	5,069,307
General Assembly	42,934,588	46,965,432
Office of the Governor		
Office of the Governor	5,324,590	5,344,528
Office of State Budget and Management	5,019,735	5,021,795
OSBM – Reserve for Special Appropriations	11,358,429	5,111,429
Housing Finance Agency	10,450,945	4,750,945
Department of Insurance		
Insurance	28,220,714	28,110,582
Insurance – Volunteer Safety Workers' Compensation	2,000,000	4,500,000

Office of Lieutenant Governor	754,737	753,037
Department of Revenue	81,447,475	80,630,250
Department of Secretary of State	8,934,063	9,269,633
Department of State Treasurer		
State Treasurer	8,690,595	8,295,843
State Treasurer – Retirement for Fire and Rescue Squad Workers	8,651,457	8,651,457
TRANSPORTATION		
Department of Transportation	$ 200,000	$ 0
RESERVES, ADJUSTMENTS AND DEBT SERVICE		
Reserve for Compensation Increases	$ 243,181,327	$ 235,185,705
Salary Adjustment Fund: 2005-2007 Biennium	4,500,000	4,500,000
Salary Adjustment Fund: 2004-2005 Fiscal Year	4,500,000	4,500,000
Reserve for Teachers' and State Employees' Retirement Contribution	13,810,800	13,810,800
Reserve for Retirement System Payback	25,000,000	0
Reserve for Death Benefit Trust	12,899,200	12,899,200
Reserve for Disability Income Plan	6,586,500	6,586,500
Reserve for State Health Plan	108,648,000	142,728,000
Contingency and Emergency Fund	5,000,000	5,000,000
Reserve for Information Technology Rate Adjustments	(2,300,000)	(2,300,000)
Information Technology Fund	24,375,000	8,025,000
MH/DD/SAS Trust Fund	10,000,000	0
Health and Wellness Trust Fund	10,000,000	0
Reserve for Job Development Investment Grants (JDIG)	9,000,000	12,400,000
Reserve for Increased Fuel Costs	3,000,000	0

Reserve for Contingent Appropriations	85,000,000	85,000,000
Debt Service		
General Debt Service	489,544,211	619,291,140
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	**$ 17,025,846,458**	**$ 17,293,127,963**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) The General Fund availability used in developing the 2005-2007 biennial budget is shown below:

	FY 2005-2006	**FY 2006-2007**
Unappropriated Balance Remaining from Previous Year	$ 0	$ 117,227,875
Projected Over Collections FY 2004-2005	681,500,000	0
Projected Reversions FY 2004-2005	115,000,000	0
Less Earmarkings of Year End Credit Balance		0
Savings Reserve Account	(199,125,000)	0
Repairs and Renovations	(125,000,000)	0
Beginning Unreserved Credit Balance	**$ 472,375,000**	**$ 114,345,875**
Revenues Based on Existing Tax Structure	**$ 15,417,300,000**	**$ 16,993,257,284**
Nontax Revenues		
Investment Income	74,800,000	78,700,000
Judicial Fees	144,800,000	148,300,000
Disproportionate Share	100,000,000	100,000,000
Insurance	49,500,000	51,300,000
Other Nontax Revenues	138,000,000	151,300,000
Highway Trust Fund/Use Tax Reimbursement Transfer	252,558,117	252,663,009
Highway Fund Transfer	16,166,400	16,166,400
Subtotal Nontax Revenues	**$ 775,824,517**	**$ 798,429,409**
Total General Fund Availability	**$ 16,665,499,517**	**$ 16,990,375,284**
Adjustments to Availability: 2005 Session		
Streamlined Sales Tax Changes	40,000,000	61,700,000
Maintain 4.5% Sales Tax Rate	417,100,000	462,700,000
Other Sales Tax Changes		
Apply Sales Tax to Candy	9,800,000	15,800,000
Apply General Sales Tax Rate to Cable	10,900,000	26,100,000
Exempt Potting Soil for Farmers	(200,000)	(300,000)
Tobacco Tax Rate Changes	118,800,000	189,400,000
Extend 8.25% Individual Income Tax Rate for 2 years	39,800,000	89,700,000

Continue Use Tax Line on Individual Returns	3,200,000	3,200,000
Conform Estate Tax to Federal Sunset	29,100,000	115,600,000
Film Industry Jobs Incentives	(3,500,000)	(3,500,000)
IRC Update – Partial Conformance	(8,000,000)	(10,700,000)
Adjust Rates for Health Maintenance Organizations	0	14,300,000
Increase Earmarking for NC Grape Growers Council	(150,000)	(150,000)
Proceeds from the Sale of the Polk Building	4,977,781	0
Justice and Public Safety Fees	17,028,271	20,428,271
Transfer from Tobacco Trust Fund	34,000,000	30,000,000
Transfers from Special Revenue and Other Funds	5,453,950	0
Reimburse Debt Service for Certain Capital Facilities and Land Acquisition per S.L. 2004-179	5,958,723	21,060,827
Transfer to Civil Penalty and Forfeiture Fund	(80,000,000)	(85,000,000)
Suspend Highway Fund Transfer	(16,166,400)	(16,166,400)
Adjust Transfer from Insurance Regulatory Fund	389,013	243,813
Adjust Transfer from Treasurer's Office	468,478	67,478
Subtotal Adjustments to Availability: 2005 Session	**$ 628,959,816**	**$ 934,483,989**
Revised General Fund Availability	**$ 17,294,459,333**	**$ 17,927,741,273**
Less: General Fund Appropriations		
SB 622 (2005 Appropriations Act)	(17,077,231,458)	(17,293,127,963)
G.S. 143-15.3B: Clean Water Management Trust Fund	(100,000,000)	(100,000,000)
Total General Fund Appropriations 2005-2007 Biennium	**($17,177,231,458)**	**($17,393,127,963)**
Unappropriated Balance Remaining	**$ 117,227,875**	**$ 534,613,310**

SECTION 2.2.(b) Notwithstanding G.S. 143-16.4(a2), of the funds credited to the Tobacco Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2005-2007 fiscal biennium, the sum of thirty-four million dollars ($34,000,000) for the 2005-2006 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2006-2007 fiscal year shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2005-2006 and 2006-2007 fiscal years.

SECTION 2.2.(c) G.S. 143-15.3 is amended by adding a new subsection to read:

"(a2) The transfer of funds to the Savings Reserve Account in accordance with this section or any other provision of law is not an "appropriation made by law", as that phrase is used in Article V, Section 7(1) of the North Carolina Constitution."

This subsection becomes effective June 30, 2005.

SECTION 2.2.(d) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer one hundred twenty-five million dollars ($125,000,000) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005. Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2005-2006 fiscal year to be used in accordance with G.S. 143-15.3A. This subsection becomes effective June 30, 2005.

SECTION 2.2.(e) When the Highway Trust Fund was created in 1989, the revenue from the sales tax on motor vehicles was transferred from the General Fund to the Highway Trust Fund. To offset this loss of revenue from the General Fund, the Highway Trust Fund was required to transfer one hundred seventy million dollars ($170,000,000) to the General Fund each year, an amount equal to the revenue in 1989 from the sales tax on motor vehicles. This transfer did not, however, make the General Fund whole after the transfer of the sales tax revenue because no provision has been made to adjust the amount for the increased volume of transactions and increased vehicle prices. The additional eighty million dollars ($80,000,000) transferred from the Highway Trust Fund to the General Fund by this act is an effort to recover a portion of the sales tax revenues that would have gone to the General Fund over the last 16 years.

SECTION 2.2.(f) Notwithstanding G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2005-2006 fiscal year and for the 2006-2007 fiscal year is two hundred fifty million dollars ($250,000,000).

SECTION 2.2.(g) Section 2.2(g) of S.L. 2002-126 is repealed.

SECTION 2.2.(h) Notwithstanding any other provision of law to the contrary, effective July 1, 2005, cash balances remaining in special funds on June 30, 2005, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) according to the schedule that follows. These funds shall be used to support General Fund appropriations for the 2005-2006 fiscal year.

Fund	**Amount Transferred**
Department of Environment and Natural Resources	
Budget Code 24300, Fund Code 2338 (DAQ-Inspections and Maintenance – Air Pollution)	$ 300,000
Budget Code 24300, Fund Code 2106 (DEH – Sleep Products)	200,000
Budget Code 24300, Fund Code 2735 (DLR – Sedimentation Fees)	200,000
Budget Code 24300, Fund Code 2130 (DWQ – Well Construction Fund)	100,000
Budget Code 24300, Fund Code 2335 (DWQ – Lab Certification Fees)	100,000
Budget Code 24300, Fund Code 2341 (DWQ – Water Permits)	500,000
Budget Code 64306, Fund Code 6341 (DWQ – WW Treatment Maintenance and Repair)	100,000
Budget Code 24304, Fund Code 2982 (DWQ – Riparian Buffer Restoration)	2,000,000
Department of Corrections	
Budget Code 24502, (Inmate Canteen/Welfare Fund)	440,000
Judicial Department	
Budget Code 22005, Fund Code 2263 (Worthless Check Fund)	100,000

Department of Administration	
Budget Code 24160, Fund Code 2000 (NC Flex)	913,950

SECTION 2.2.(i) The transfer of cash from Department of Correction, Budget Code 74500, Fund Code 7100 (Prison Enterprises) to Nontax Budget Code 19978 (Intrastate Transfers) shall be increased by five hundred thousand dollars ($500,000), effective July 1, 2005, for the 2005-2006 fiscal year.

SECTION 2.2.(j) The Governor shall analyze the current State public school teacher salary schedule, trends in salaries, and the current disparity between North Carolina teacher pay and the national average to determine how teacher pay affects the State's ability to recruit and retain highly qualified public school teachers to improve educational opportunity and outcomes for children across North Carolina. The Governor may, after consultation with the Speaker of the House and the President Pro Tempore of the Senate, devise and execute prior to July 1, 2006, a plan to reduce the disparity and may use funds available from the Reserve for Contingent Appropriations to begin to execute such a plan.

PART III. CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – Highway Fund	**2005-2006**	**2006-2007**
Department of Transportation		
Administration	$ 93,888,317	$ 95,100,980
Division of Highways		
Administration	30,621,612	30,632,164
Construction	167,010,000	139,750,000
Maintenance	804,714,539	714,793,288
Planning and Research	4,280,000	4,280,000
OSHA Program	425,000	425,000
Ferry Operations	21,264,811	21,264,811
State Aid		
Municipalities	91,910,000	92,650,000
Public Transportation	66,466,447	89,866,447
Railroads	17,308,153	17,101,153
Governor's Highway Safety	293,118	293,118
Division of Motor Vehicles	96,047,914	95,468,137
Other State Agencies	222,948,237	214,860,979
Reserves and Transfers	20,831,852	22,422,852
TOTAL	**$1,638,010,000**	**$1,538,908,929**

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2005-2007 biennial budget is shown below:

Highway Fund Availability Statement	**2005-2006**	**2006-2007**
Beginning Credit Balance	$ 10,490,000	–
Estimated Revenue	1,627,520,000	1,697,940,000
Estimated Reversions	–	–
Total Highway Fund Availability	**$ 1,638,010,000**	**$ 1,697,940,000**

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – Highway Trust Fund	**2005-2006**	**2006-2007**
Intrastate System	472,112,366	496,924,658
Urban Loops	190,902,579	200,935,637
Aid to Municipalities	49,535,599	52,138,988
Secondary Roads	86,825,599	90,358,988
Program Administration	41,295,740	42,918,720
Transfer to General Fund	252,558,117	252,663,009
GRAND TOTAL CURRENT OPERATIONS AND EXPANSION	**$1,093,230,000**	**$1,135,940,000**

PART V. BLOCK GRANTS

DHHS BLOCK GRANTS

SECTION 5.1.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2006, according to the following schedule:

COMMUNITY SERVICES BLOCK GRANT

01.	Community Action Agencies	$ 15,071,666
02.	Limited Purpose Agencies	837,315
03.	Department of Health and Human Services to administer and monitor the activities of the	

	Community Services Block Grant	837,315
TOTAL COMMUNITY SERVICES BLOCK GRANT		$ 16,746,296
SOCIAL SERVICES BLOCK GRANT		
01.	County departments of social services (Transfer from TANF – $4,500,000)	$ 28,868,189
02.	Allocation for in-home services provided by county departments of social services	2,101,113
03.	Adult day care services	2,155,301
04.	Child Protective Services/CPS Investigative Services/Child Medical Evaluation Program	238,321
05.	Foster Care Services – CCIs	1,706,063
06.	Division of Aging and Adult Services – Home and Community Care Block Grant	1,834,077
07.	UNC-CH CARES Program for training and consultation services	247,920
08.	Mental Health Services Program	422,003
09.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services – Developmentally Disabled Services Program	5,000,000
10.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	3,234,601
11.	Division of Services for the Blind – Independent Living Program	3,182,987
12.	Division of Vocational Rehabilitation Services – Easter Seals Society/UCP	188,263
13.	Office of the Secretary – Office of Economic Opportunity for N.C. Senior Citizens' Federation for outreach services to low-income elderly persons	41,302
14.	Child Care Subsidies	3,150,000
15.	Division of Facility Services –	

	Adult Care Licensure Program		411,897
16.	Division of Facility Services – Mental Health Licensure		205,668
17.	State administration		1,706,017
18.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services – Administration		18,098
19.	Division of Facility Services		37,204
20.	Office of the Secretary – NC Interagency Council for Coordinating Homeless Programs		250,000
21.	Department of Administration for the N.C. State Commission of Indian Affairs In-Home Services Program for the Elderly		203,198
22.	Transfer to Preventative Health Services Block Grant for HIV/AIDS education, counseling, and testing		145,819
TOTAL SOCIAL SERVICES BLOCK GRANT			$ 55,348,041
LOW-INCOME ENERGY BLOCK GRANT			
01.	Energy Assistance Programs		$ 13,208,740
02.	Crisis Intervention		9,592,387
03.	Administration		3,186,258
	County DSS	$1,930,734	
	Division of Social Services	$ 300,000	
	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	$ 7,146	
	Local Residential Energy Efficiency Service Providers	$ 353,820	
	Office of the Secretary	$ 594,558	
04.	Weatherization Program		4,343,072
05.	Department of Administration – N.C. State Commission of Indian Affairs		54,840
06.	Heating Air Repair and Replacement Program		2,025,687

TOTAL LOW-INCOME ENERGY BLOCK GRANT		$ 32,410,984
MENTAL HEALTH SERVICES BLOCK GRANT		
01.	Provision of community-based services for severe and persistently mentally ill adults	$ 6,983,202
02.	Provision of community-based services to children	3,921,991
03.	Comprehensive Treatment Services Program for Children	1,500,000
04.	Administration	568,911
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		$ 12,974,104
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		
01.	Provision of community-based alcohol and drug abuse services, tuberculosis services, and services provided by the Alcohol and Drug Abuse Treatment Centers	$ 20,441,082
02.	Continuation of services for pregnant women and women with dependent children	8,069,524
03.	Continuation of services to IV drug abusers and others at risk for HIV diseases	4,816,378
04.	Child Substance Abuse Prevention	5,835,701
05.	Provision of services to children and adolescents	4,940,500
06.	Juvenile Services – Family Focus	851,156
07.	Allocation to the Division of Public Health for HIV/STD Risk Reduction Projects	383,980
08.	Allocation to the Division of Public Health for HIV/STD Prevention by County Health Departments	209,576

09.	Allocation to the Division of Public Health for the Maternal and Child Health Hotline	37,779
10.	Administration	2,596,307
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		$ 48,181,983

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

01.	Child care subsidies	$161,058,393
02.	Quality and availability initiatives	33,059,644
03.	Administrative expenses	7,163,654
04.	Transfer from TANF Block Grant for child care subsidies	81,292,880
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		$282,574,571

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT

01.	Work First Cash Assistance	$114,625,680
02.	Work First County Block Grants	94,653,315
03.	Child Welfare Workers for local DSS	12,452,391
04.	Support Our Students – Department of Juvenile Justice and Delinquency Prevention	2,749,642
05.	Family Violence Prevention	1,200,000
06.	Work First – After-School Services for At-Risk Children YWCA Central Carolinas Youth Development Programs $176,000	2,249,642
07.	Division of Social Services – Administration	356,291
08.	Office of the Secretary – Administration	60,249
09.	Child Welfare Training	2,550,000

10.	Boys and Girls Clubs	1,500,000
11.	Work Central Career Advancement Center	550,000
12.	Special Children's Adoption Fund	3,000,000
13.	Maternity Homes	838,000
14.	After-School Programs for At-Risk Youth in Middle Schools	500,000
15.	Pregnancy Prevention Initiatives	2,500,000
16.	Subsidized Child Care for TANF Recipients	36,563,266
17.	TANF Automation Projects	592,500
18.	NC FAST Implementation	2,717,298
19.	Transfer to the Child Care and Development Fund Block Grant for child care subsidies	81,292,880
20.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT		$365,451,154

MATERNAL AND CHILD HEALTH BLOCK GRANT

01.	Healthy Mothers/Healthy Children Block Grants to Aid-to-County	9,359,236
02.	Children's Health Services Aid-to-County	7,364,216
03.	Healthy Beginnings Aid-to-County	404,559
04.	Maternal Health Aid-to-County	397,761
05.	Children's Health Services	2,836,028
06.	Office of Women's Health and Maternal Health Activities	114,063
07.	State Center for Health Statistics	28,874

08.	Local Technical Assistance & Training	46,866
09.	Injury and Violence Prevention	149,438
10.	Office of Minority Health	99,352
11.	Special Supplemental Nutrition Program for Women, Infants and Children (WIC)	25,713
12.	Immunization Program – Vaccine Distribution	819,997
13.	Administration	475,282
14.	Adolescent Pregnancy Prevention Coalition of NC Total of $150,000 grant-in-aid	85,710
TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT		$ 22,207,095

PREVENTIVE HEALTH SERVICES BLOCK GRANT

01.	Statewide Health Promotion Programs	$3,653,520
02.	Rape Crisis/Victims' Services Program – Council for Women	197,112
03.	Transfer from Social Services Block Grant – HIV/AIDS education, counseling, and testing	145,819
04.	Oral Health	134,251
05.	Administration and Program Support	121,271
06.	Osteoporosis Task Force Operating Costs	150,000
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT		$4,401,973

GENERAL PROVISIONS

SECTION 5.1.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

(1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.

(2) A delineation of the proposed State and local administrative expenditures.

(3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
(4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
(5) A projection of current year expenditures by program or activity.
(6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 5.1.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section or increase State administrative expenditures.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section. In allocating a decrease in federal fund availability, the Department shall not eliminate the funding for a program or activity appropriated in this section unless it is related to the State administration.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(d) All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grant shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(e) The Department of Health and Human Services shall develop a monitoring and oversight plan for all recipients, both public and private, and subrecipients of the federal Block Grant funding. The plan shall be modeled after the Department's performance contracting initiative and include the following:

(1) Performance standards for recipients.

(2) Financial audit standards for non-State entities equivalent to the requirements in G.S. 143-6.2 for non-State entities receiving State funds.
(3) Means for collecting performance data from recipients.
(4) Any other information necessary for monitoring and overseeing the use of Block Grant funding.

The Department shall provide the plan to the Fiscal Research Division by January 1, 2006.

SECTION 5.1.(f) The Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on positions funded from federal Block Grants. The report shall include the following for each Block Grant:

(1) All State positions currently funded through the Block Grant, including permanent, temporary, and time-limited positions.
(2) Budgeted salary and fringe benefits for each position.
(3) Identify the percentage of Block Grant funds used to fund each position.

The report shall be submitted no later than December 1, 2005.

SOCIAL SERVICES BLOCK GRANT

SECTION 5.1.(g) Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs are exempt from the provisions of 10A NCAC 71R.0201(3).

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

SECTION 5.1.(h) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

MENTAL HEALTH BLOCK GRANT

SECTION 5.1.(i) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2005-2006 fiscal year, and the sum of four hundred twenty-two thousand three dollars ($422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children in accordance with Section 10.25 of this act.

SECTION 5.1.(j) The Department of Health and Human Services shall contract with the University of North Carolina at Chapel Hill for the purpose of providing psychology student stipends in the amount of fifty thousand dollars ($50,000) for the 2005-2006 fiscal year. Twenty-five thousand dollars ($25,000) of this contract shall be paid from the Mental Health Block Grant.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 5.1.(k) The sum of no more than four hundred thousand dollars ($400,000) appropriated in this section to the Department of Health and Human Services in the Child Care and Development Fund Block Grant may be used for the operations of the Medical Child Care Pilot.

SECTION 5.1.(l) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development and School Readiness for the subsidized child care program.

SECTION 5.1.(m) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF)

SECTION 5.1.(n) The sum of four hundred sixteen thousand five hundred forty dollars ($416,540) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 5.1.(o) The sum of two million seven hundred forty-nine thousand six hundred forty-two dollars ($2,749,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services and transferred to the Department of Juvenile Justice and Delinquency Prevention for the 2005-2006 fiscal year shall be used to support the existing Support Our Students Program, including gang prevention, and to expand the Program statewide, focusing on low-income communities in unserved areas. These funds shall not be used for administration of the Program.

SECTION 5.1.(p) The sum of one million two hundred thousand dollars ($1,200,000) appropriated under this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars ($75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall jointly develop a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2005. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars ($5,000); and (ii) each county shall

receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2005, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2005. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

The Department of Health and Human Services shall report on the uses of these funds no later than March 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(q) The sum of two million two hundred forty-nine thousand six hundred forty-two dollars ($2,249,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration. The Department shall report no later than March 1, 2006, on its progress in complying with this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 5.1.(r) The sum of twelve million four hundred fifty-two thousand three hundred ninety-one dollars ($12,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2005-2006 fiscal year for child welfare improvements, shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and postadoption services for eligible families.

SECTION 5.1.(s) The sum of two million five hundred fifty thousand dollars ($2,550,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for fiscal year 2005-2006 shall be used to support various child welfare training projects as follows:

(1) Provide a regional training center in southeastern North Carolina.
(2) Support the Masters Degree in Social Work/Baccalaureate Degree in Social Work Collaborative.
(3) Provide training for residential child care facilities.
(4) Provide for various other child welfare training initiatives.

SECTION 5.1.(t) The sum of eight hundred thirty-eight thousand dollars ($838,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services shall be used to purchase services at maternity homes throughout the State.

SECTION 5.1.(u) The sum of three million dollars ($3,000,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 2005-2006 fiscal year shall be used in accordance with Section 10.48 of this act. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 5.1.(v) The sum of one million seven hundred six thousand sixty-three dollars ($1,706,063) appropriated in this section in the TANF Block Grant for child caring agencies for the 2005-2006 fiscal year shall be allocated to the State Private Child Caring Agencies Fund.

SECTION 5.1.(w) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant for Boys and Girls Clubs shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

SECTION 5.1.(x) The sum of five hundred fifty thousand dollars ($550,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant shall be transferred to Work Central, Inc. Work Central, Inc., shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Work Central, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not duplicative of local employment security commissions in the nine counties served by Work Central, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2006.

SECTION 5.1.(y) The sum of two million seven hundred seventeen thousand two hundred ninety-eight dollars ($2,717,298) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology). The N.C. FAST Program involves the entire automation initiative through which families access services and local departments of social services deliver benefits, supervised by the Department of Health and Human Services, Divisions of Social Services, Aging and Adult Services, Medical Assistance, and Child Development. The

statewide automated initiative shall be implemented in compliance with federal regulations in order to ensure federal financial participation in the project. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2006.

SECTION 5.1.(z) The sum of five hundred thousand dollars ($500,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on its progress in complying with this subsection no later than May 1, 2006.

SECTION 5.1.(z1) In implementing the TANF Block Grant, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

SECTION 5.1.(z2) The Department of Health and Human Services shall reallocate up to eight million two hundred eight thousand nine hundred thirty-one dollars ($8,208,931) from General Fund appropriations for Work First Cash Assistance payments for fiscal year 2005-2006 to the Adoption and Foster Care Programs to fund shortfalls in foster care and adoption services during State fiscal year 2005-2006. Of these reallocated funds, six million eight hundred thirty-one thousand three hundred fifteen dollars ($6,831,315) shall be TANF cash assistance carryforward from State fiscal year 2004-2005, and one million three hundred seventy-seven thousand six hundred sixteen dollars ($1,377,616) shall be from the State fiscal year 2005-2006 appropriation for State TANF cash assistance. The Department of Health and Human Services shall use State funds reallocated under this subsection only after all other appropriated State and federal funding for adoption and foster care has been exhausted and may only use these funds for adoption and foster care or to maintain the State TANF cash assistance maintenance of effort (MOE).

The Department shall submit a report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than April 1, 2006. The report shall provide specific information on how funding for adoption and foster care has been spent. The following data shall be included:

(1) The total number of foster children served and the number that are IV-E eligible, by county.

(2) The amount of federal and State spending for both foster care and adoption by funding source.

(3) Total payments made to child caring institutions (CCIs) by institution, the number of children served by each, and the total number of days of foster care services each provided.
(4) The daily payment provided by each child caring institution to foster parents.
(5) The amount of funding for foster care provided to each county, the number of children placed in foster care, and the number of days of care provided.
(6) For each county, the number of children placed in county foster homes and the number placed by CCIs.
(7) The length of time children placed by counties and by child caring institutions remain in foster care, listed by county and by CCI.
(8) The amount of funding for adoption provided to each county and the number of children placed by each county.
(9) The amount of funding provided to each private adoption agency and the number of children placed by each adoption agency.
(10) The number of children adopted out of foster care by child caring institution and by county.
(11) The special needs adoption assistance-amount spent and the number of children included.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 5.1.(aa) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2005-2006 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

SECTION 5.1.(bb) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

SECTION 5.1.(cc) Of the funds budgeted in the Maternal and Child Health Block Grant, three million two hundred fifty thousand dollars ($3,250,000) shall be used for a school nurse funding initiative for the 2005-2006 fiscal year. The Department of Health and Human Services, Division of Public Health, in conjunction with the Department of Public Instruction, shall provide funds to communities to hire school nurses. The program will fund approximately 65 time-limited nurses. The criteria shall include determining the areas in the greatest need for school nurses with the greatest inability to pay for these nurses. Among other criteria, consideration shall also be given to (i) the current nurse-to-student ratio; (ii) the economic status of the community; and (iii) the health needs of area children.

There shall be no supplanting of local or Title I funds with these block grant funds. Communities shall maintain their current level of effort and funding for school nurses. No block grant funds shall be used for funding nurses for State agencies. All funding shall be used for direct services.

The Department of Health and Human Services shall report on the use of funds allocated under this section by December 1, 2005, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the

Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

NER BLOCK GRANTS

SECTION 5.2.(a) Appropriations from federal block grant funds are made for fiscal year ending June 30, 2006, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01.	State Administration	$ 1,000,000
02.	Urgent Needs and Contingency	1,000,000
03.	Scattered Site Housing	13,200,000
04.	Economic Development	8,710,000
05.	Community Revitalization	13,500,000
06.	State Technical Assistance	450,000
07.	Housing Development	2,000,000
08.	Infrastructure	5,140,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2006 Program Year		$ 45,000,000

SECTION 5.2.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 5.2.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 5.2.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars ($1,000,000) may be used for State Administration; not less than one million dollars ($1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars ($13,200,000) may be used for Scattered Site Housing; up to eight million seven hundred ten thousand dollars ($8,710,000) may be used for Economic Development, including Urban Redevelopment Grants and Small Business or Entrepreneurial Assistance; not less than thirteen million five hundred thousand dollars ($13,500,000) shall be used for Community Revitalization; up to four hundred fifty thousand dollars ($450,000) may be used for State Technical Assistance; up to two million dollars

($2,000,000) may be used for Housing Development; up to five million one hundred forty thousand dollars ($5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 5.2.(e) Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

SECTION 5.2.(f) Department of Commerce Demonstration Grants in Partnership with Rural Economic Development Center, Inc. – The Department of Commerce, in partnership with the Rural Economic Development Center, Inc., shall award up to two million two hundred fifty thousand dollars ($2,250,000) in demonstration grants to local governments in very distressed rural areas of the State. These grants shall be used to address critical infrastructure and entrepreneurial needs and to provide small business assistance.

SECTION 5.2.(g) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

(1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

PART VI. GENERAL PROVISIONS

APPROPRIATION OF CASH BALANCES AND RECEIPTS

SECTION 6.1.(a) Expenditures of cash balances, federal funds, departmental receipts, grants, and gifts from the various General Fund, Special Revenue Fund, Enterprise Fund, Internal Service Fund, and Trust and Agency Fund budget codes are appropriated and authorized for the 2005-2007 fiscal biennium as follows:

(1) For all budget codes listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6", cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2005-2006

fiscal year and the 2006-2007 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly.

(2) For all budget codes that are not listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6", cash balances and receipts are appropriated for each year of the 2005-2007 fiscal biennium up to the level of actual expenditures for the 2004-2005 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs, purposes, objects, and line items authorized for the 2004-2005 fiscal year.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2005-2006 fiscal year and the 2006-2007 fiscal year and shall be used only to pay debt service requirements.

(4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2005-2006 fiscal year and the 2006-2007 fiscal year.

All these cash balances, federal funds, departmental receipts, grants, and gifts shall be expended and reported in accordance with the provisions of the Executive Budget Act, except as otherwise provided by law and this section.

SECTION 6.1.(b) Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the Executive Budget Act.

Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143-23 and G.S. 143-27, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

SECTION 6.1.(c) Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

SECTION 6.1.(d) Notwithstanding subsections (a) and (b) of this section, if Senate Bill 1126, 2005 Session, or substantially similar legislation revising the Coastal Recreational Fishing License program or establishing a unified fishing

license for hunting and fishing in coastal, joint, and inland waters, becomes law, any receipts from license revenues generated pursuant to such legislation are hereby appropriated for the 2005-2006 fiscal year and the 2006-2007 fiscal year for programs and purposes authorized by law.

CONTINGENCY AND EMERGENCY FUND ALLOCATIONS

SECTION 6.2. Funds in the amount of five million dollars ($5,000,000) for the 2005-2006 fiscal year and five million dollars ($5,000,000) for the 2006-2007 fiscal year are appropriated in this act to the Contingency and Emergency Fund. Of these funds:

(1) Up to one million dollars ($1,000,000) for the 2005-2006 fiscal year may be used for purposes related to the Base Realignment and Closure Act (BRAC); and

(2) Notwithstanding any other provision of law, no more than five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and no more than five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year shall be expended for purposes other than those set out in G.S.143-23(a1)(2) or in subdivision (1) of this section.

The remainder of these funds shall be expended for purposes outlined in G.S. 143-23(a1)(2).

EXPENDITURES OF FUNDS IN RESERVES LIMITED

SECTION 6.3. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

BUDGET REPORTS ACCURATELY REFLECT PROJECTED RECEIPTS, EXPENDITURES, FUND BALANCES, AND ACTUAL COLLECTIONS

SECTION 6.4. G.S. 143-11(a) reads as rewritten:

"§ **143-11. Survey of ~~departments.~~ departments and recommended budget report.**

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the

ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;
(2) The certified budget for the preceding fiscal year;
(3) The currently authorized budget for the preceding fiscal year;
(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and
(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements. The budget report shall include accurate projections of receipts, expenditures, and fund balances for all budget codes, funds, and accounts. Estimated receipts, including tuition collected by university or community college institutions, shall be adjusted to reflect actual collections from the previous fiscal year, unless the Director either (i) recommends a change that will result in collections in the budget year that differ from the actual collections of the prior year or (ii) otherwise determines there is a more reasonable basis upon which to accurately project receipts."

AUTHORIZATION TO ESTABLISH RECEIPT-SUPPORTED POSITIONS

SECTION 6.5. Notwithstanding G.S. 143-34.1(a1), a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations.

OVERHEAD COST RECOVERY

SECTION 6.6.(a) The General Assembly finds that the General Fund supports many State agencies that provide services and administer programs that impact all of State government. These agencies include the Office of the Governor, the Office of State Controller, the Department of Administration, including the Office of State Personnel, State Property Office, Office of State Construction, and the Division of Purchase and Contract, the Secretary of State, the Office of State Treasurer, and the Office of State Auditor. The General Assembly also finds that the General Fund bears the departmental administrative overhead costs for many programs, activities, boards, and commissions that are supported by non-General Fund sources. The General Assembly finds that an indirect cost allocation program should be established to reimburse the General Fund for overhead and indirect costs incurred on behalf of these programs, activities, boards, and commissions.

SECTION 6.6.(b) The Office of State Budget and Management shall study the allocation of overhead costs and propose an overhead cost recovery program for consideration by the General Assembly. In developing its recommendation, the Office of State Budget and Management shall do the following:

(1) Determine a methodology appropriate for the calculation and allocation of overhead costs.

(2) For each program whose overhead costs are borne in whole or in part by the General Fund and that receive overhead cost reimbursement from the federal government or other non-General Fund sources, ensure that all future overhead cost reimbursements revert to the General Fund in accordance with the State Budget Manual, except as otherwise required by law.

(3) For each program whose overhead costs are borne in whole or in part by the General Fund and that are not recovering overhead costs from other funding sources, establish an indirect cost allocation methodology that properly reimburses the General Fund, except as otherwise required by law.

(4) Estimate the anticipated reimbursement to the General Fund.

SECTION 6.6.(c) The Office of State Budget and Management shall report its recommendations developed pursuant to this section to the Chairs of the Senate Committee on Appropriations/Base Budget, the Chairs of the House of Representatives Committee on Appropriations, and the Fiscal Research Division by April 1, 2006.

SECTION 6.6.(d) Overhead cost recovery recommendations developed pursuant to this section shall not apply to overhead cost reimbursements collected under any grant agreement by The University of North Carolina or any of its affiliated institutions.

PRIOR CONSULTATION WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

SECTION 6.7.(a) The last paragraph of G.S. 120-76(8) is recodified as G.S. 120-76.1 and reads as rewritten:

"§ **120-76.1. Prior consultation with the Commission.**

(a) Notwithstanding the provisions of ~~this subdivision~~ G.S. 120-76(8) or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action ~~under this subsection~~ without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this ~~paragraph~~ subsection no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(b) Any agency, board, commission, or other entity required under G.S. 120-76(8) or any other provision of law to consult with the Commission prior to taking an action shall submit a detailed report of the action under consideration to the Chairs of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly. If the Commission does not hold a meeting to hear the

consultation within 90 days of receiving the submission of the detailed report, the consultation requirement is satisfied.

(c) Consultations regarding the establishment of new fees and charges and the increase of existing fees and charges are governed by G.S. 12-3.1, and this section does not apply to those consultations."

SECTION 6.7.(b) G.S. 143-23(a1) reads as rewritten:

"(a1) Notwithstanding the provisions of subsection (a) of this section, a department, institution, or other spending agency may, with approval of the Director of the Budget, spend more than was appropriated for:

(1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was appropriated from all sources for the purpose or program for the fiscal period;

(2) A purpose or program, without consultation with the Joint Legislative Commission on Governmental Operations, if the overexpenditure of the purpose or program is:

a. Required by a court, Industrial Commission, or administrative hearing officer's order;

b. Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

c. Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on any overexpenditures under this subdivision; or

(3) A purpose or program, after consultation with the Joint Legislative Commission on Governmental Operations in accordance with G.S. 120-76(8), and only if: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted and (ii) the scope of the purpose or program is not increased. The consultation is required as follows:

a. For a purpose or program with a certified budget of up to five million dollars ($5,000,000), consultation is required when the authorization for the overexpenditure exceeds ten percent (10%) of the certified budget;

b. For a purpose or program with a certified budget of from five million dollars ($5,000,000) up to twenty million dollars ($20,000,000), consultation is required when the authorization for the overexpenditure exceeds five hundred thousand dollars ($500,000) or seven and one-half percent (7.5%) of the certified budget, whichever is greater;

c. For a purpose or program with a certified budget of twenty million dollars ($20,000,000) or more, consultation is required when the authorization for the overexpenditure exceeds one million five hundred thousand dollars ($1,500,000) or five percent (5%) of the certified budget, whichever is greater;

d. For a purpose or program supported by federal funds or when expenditures are required for the reasons set out in subdivision (2) of this subsection, no consultation is required.

~~If the Joint Legislative Commission on Governmental Operations does not meet for more than 30 days, the Director of the Budget may satisfy the requirements of the subsection to report to or consult with the Commission by reporting to or consulting with a joint meeting of the Chairs of the Appropriations Committees of the Senate and the House of Representatives.~~"

CONSULTATION NOT REQUIRED PRIOR TO ESTABLISHING OR INCREASING FEES IN ACCORDANCE WITH BUDGET ACT AND CLARIFICATION OF THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF AGENCY FEES AND CHARGES

SECTION 6.8.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in the Current Operations and Capital Improvements Appropriations Act of 2005 or the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, which was distributed in the Senate and the House of Representatives and used to explain this act.

SECTION 6.8.(b) G.S. 12-3.1 reads as rewritten:

"§ **12-3.1. Fees and charges by agencies.**

(a) Authority. – Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public. In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to ~~make and promulgate~~ adopt rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge for that specific service. Notwithstanding any other law, ~~an agency's establishment or increase of a fee or charge shall not go into effect until one of the following conditions has been met:~~

~~(1) The General Assembly has enacted express authorization of the amount of the fee or charge to be established or increased and the purpose of that fee or charge.~~

~~(2) The General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with~~

a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased. The agency shall submit a request for consultation to all members of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly on the same date the notice of text of the rule is published. The request for consultation shall consist of a written report stating (i) the amount of the current fee or charge, if applicable, (ii) the amount of the proposed new or increased fee or charge, (iii) the statutory authority for the fee or charge, and (iv) a detailed explanation of the need for the establishment or increase of the fee or charge.

(a1) If the Commission does not hold a meeting to hear the consultation required by subsection (a) of this section within 90 days after the notice of text of the rule has

been published and the consultation request required by subsection (a) of this section has been submitted, the consultation requirement is satisfied.

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

(1) Agency. – Every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government. The term does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, the University of North Carolina, community colleges, hospitals, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(2) Rule. – Every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency, including rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

(c) Exceptions. – This section does not apply to any of the following:

(1) Rules establishing fees or charges to State, federal or local governmental units.

(2) A reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.

(3) Reasonable registration fees covering the cost of a conference or workshop.

(4) Reasonable user fees covering the cost of providing data processing services.

(d) In lieu of the requirements of ~~subdivision (a)(2)~~ subsections (a) and (a1) of this section, the North Carolina State Ports Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations as provided in G.S. 143B-454(a)(11)."

SECTION 6.8.(c) Subsection (a) of this section expires June 30, 2007.

STATE GRANT RECIPIENTS/CONFLICT OF INTEREST POLICY/NO OVERDUE TAX DEBTS/OTHER TECHNICAL AND CLARIFYING CHANGES

SECTION 6.9.(a) G.S. 143-6.2 reads as rewritten:

"§ **143-6.2. Use of State funds by non-State entities.**

(a) Disbursement and Use of State Funds. – Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State. For the purposes of this ~~section, the term "non-State entity" means a firm, corporation, partnership, association, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution. For the purposes of this section, "unit of local government" has the meaning set out in G.S. 159-7(15) and "public authority" has the meaning set out in G.S. 159-7(10).~~ section, the following definitions apply:

(1) Non-State entity. – A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person,

organization, group, or governmental entity that is not a State agency, department, or institution.

(2) Unit of local government. – A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(3) Public authority. – A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(b) For the purposes of this section, the term "grantee" means a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. The term "subgrantee" means a non-State entity that receives a grant of State funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. The terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.

(b1) Conflict of Interest Policy. – Every grantee shall file with the State agency or department disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds and shall include actions to be taken by the grantee or the individual, or both to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State department or agency may disburse the grant funds.

(b2) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143-34(b).

(c) Compliance by Non-State Entities. – If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, or fails to submit or falsifies any information required by this section or any other provision of law, the Director shall take appropriate administrative action to ensure that no further irregularities or violations of law occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds. Appropriate administrative action includes suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(d) The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The rules shall establish policies and procedures for disbursements of grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. Such policies and procedures shall:

(1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.

(2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.

(3) Ensure that funds are spent in accordance with the purposes for which they were granted.

(4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of State grant funds.

(5) Provide for adequate oversight and monitoring to prevent the misuse of State funds.

(6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b1) and (b2) of this section.

(7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all State grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.

(8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (h) of this section.

(9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by State grant funds and each subgrantee project, program, or activity supported by State grant funds.

(10) Provide procedures for the suspension of further disbursements or use of State grant funds for noncompliance with these rules or other inappropriate use of the funds.

(11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of State grant funds.

(12) Provide procedures for the recovery and return to the grantor State agency of unexpended State grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Notwithstanding the provisions of G.S. 150B-2(8a)b, rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by subsection (d) of this section.

(g) The Office of State Budget and Management, after consultation with the administering agency, shall have the power to suspend disbursement of State grant funds to grantees or subgrantees, to prevent further use of State grant funds already disbursed, and to recover State grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(h) Audit Oversight. – The State Auditor has audit oversight, with respect to State grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends State grant funds. A grantee or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of State grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of State grant funds.

(i) Not later than May 1, 2007, and by May 1 of every succeeding year, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees or subgrantees that failed to comply with this section during the prior fiscal year, including the amount of State funds that were disbursed to each of those grantees or subgrantees during that fiscal year and the amount of State funds that were withheld.

(j) Grantor State agencies shall submit a list to the State Auditor, in the format prescribed by the State Auditor, by October 31 each year of every grantee to which the agency disbursed State funds in the prior fiscal year, the amount disbursed, the amount disbursed to each grantee, and other such information as required by the State Auditor to comply with the requirements set forth in this section.

(k) Civil Actions. – Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County."

SECTION 6.9.(b) G.S. 143-34 reads as rewritten:

"§ **143-34. Penalties and punishment for violations.**

(a) ~~A~~ Except as provided by subsection (b) of this section, a refusal to perform any of the requirements of this Article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred fifty dollars ($250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a Class 1 misdemeanor. If ~~such~~ the

offender ~~be~~ is not an officer elected by vote of the people, ~~such~~ the offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to ~~such~~ the offender.

(b) A false statement made in violation of G.S. 143-6.2(b2) is a Class A1 misdemeanor offense."

SECTION 6.9.(c) This section shall apply to all State grant funds appropriated or awarded on or after July 1, 2005. Grants awarded prior to July 1, 2005, shall be subject to the reporting requirements in effect at the time the grant was made.

AMEND THE TOBACCO RESERVE FUND TO PROMOTE THE HEALTH AND WELLNESS OF THE STATE'S CITIZENS AND ECONOMIC DEVELOPMENT

SECTION 6.12.(a) G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement, including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

SECTION 6.12.(b) If this section, or any portion of the amendment made to G.S. 66-291(b)(2) by this section, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this section shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this section. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

SECTION 6.12.(c) This section becomes effective January 1, 2006.

INFORMATION TECHNOLOGY FUND AVAILABILITY STATEMENT

SECTION 6.13.(a) The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2005-2006	**FY 2006-2007**
Receipts from Information Technology Enterprise Fee (G.S. 147-33.82)	$5,000,000	$5,000,000

Transfer from June 30, 2005, Information Technology

Services Internal Service Fund cash balance to support statewide IT initiatives	$5,000,000	
Appropriation from General Fund	$24,375,000	$8,025,000
Total Funds Available	**$34,375,000**	**$13,025,000.**

SECTION 6.13.(b) Of the funds collected by the Office of Information Technology Services from the information technology enterprise fee approved by the Office of State Budget and Management pursuant to G.S. 147-33.82, the Office shall deposit the sum of five million dollars ($5,000,000) for the 2005-2006 fiscal year and the sum of five million dollars ($5,000,000) for the 2006-2007 fiscal year in the Information Technology Fund established in G.S. 147-33.72H.

SECTION 6.13.(c) Effective July 1, 2005, the State Controller shall transfer to the Information Technology Fund established in G.S. 147-33.72H the sum of five million dollars ($5,000,000) from the cash balance remaining in the Office of Information Technology Services Internal Service Fund on June 30, 2005.

INFORMATION TECHNOLOGY APPROPRIATIONS

SECTION 6.14. Appropriations are made from the Information Technology Fund established in G.S. 147-33.72H as follows:

Office of Information Technology Services	**FY 2005-2006**	**FY 2006-2007**
To establish two project management assistant positions and one enterprise licensing position and to purchase and maintain asset management software and enterprise licenses.	$1,600,000	$1,400,000
To continue existing activities including project management assistance, security, asset management, legal support, and legacy system assessment.	$5,100,000	$3,300,000
To provide services previously supported by cross subsidies in the rate structure, including State portal maintenance, security services, enterprise identity management, and office operations.	$6,300,000	$5,800,000
To facilitate consolidation of information technology services in State agencies.	$500,000	
Office of State Controller		
To initiate replacement of the State's personnel and payroll systems consistent with the analysis and findings of the Statewide Business Infra-structure study.	$20,875,000	$2,525,000
Total Appropriation	**$34,375,000**	**$13,025,000**

Funds appropriated under this section are subject to the reporting requirement set out in G.S. 147-33.72H.

MONITOR AND EVALUATE LEASE PURCHASE AND INSTALLMENT PURCHASE ACTIVITY

SECTION 6.17.(a) By December 30, 2005, the Office of State Budget and Management, in consultation with the Office of State Treasurer, the Office of State Controller, and the Department of Administration shall:

(1) Develop and implement a management process that does all of the following:

a. Standardizes the criteria used by executive branch agencies to evaluate the business case for acquisitions by lease purchase and installment purchase.

b. Provides for executive branch agency budget submissions that clearly show current and proposed debt service requirements occasioned by existing and proposed lease purchase and installment purchase agreements.

c. Provides that all lease purchase and installment purchase agreements entered into by executive branch agencies (i) contain provisions to protect the interests of the State against nonperformance or insolvency and (ii) are centrally inventoried and monitored.

d. Includes debt accruing through lease purchase and installment purchase activity by executive branch agencies in the annual report of the Debt Affordability Advisory Committee required by G.S. 142-101.

e. Evaluates the advantages of a pooled or master lease or installment arrangement.

(2) Prepare a consolidated report summarizing by State agency all lease purchase and installment purchase expenditures in the current fiscal year and all lease purchase and installment purchase expenditures planned for the upcoming fiscal year and submit the report to the Chairs of the House of Representatives and Senate Appropriations Committees and to the Fiscal Research Division on the first day of the 2006 and 2007 Regular Sessions of the General Assembly.

SECTION 6.17.(b) This section does not apply to The University of North Carolina.

PRIVATE LICENSE PLATES ON PUBLICLY OWNED MOTOR VEHICLES

SECTION 6.18.(a) Section 6.14(b) of S.L. 2001-424 is repealed.

SECTION 6.18.(b) This section becomes effective April 30, 2005.

UNIFORM PAYROLL SYSTEM

SECTION 6.19. G.S. 143B-426.39 reads as rewritten:

"§ **143B-426.39. Powers and duties of the State Controller.**

The State Controller shall:

…

(6) ~~Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1.~~ Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with G.S. 143-3.2 and G.S. 143-34.1, for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the

State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller.

…."

CLEAN WATER MANAGEMENT TRUST FUND BOARD OF TRUSTEES/STUDY STEWARDSHIP OF CONSERVATION EASEMENTS

SECTION 6.22. The Clean Water Management Trust Fund Board of Trustees shall study management and stewardship of conservation easements. The Board shall report its findings and any recommendations to the Environmental Review Commission by December 1, 2005.

COMMISSION ON STATE PROPERTY FUNDS

SECTION 6.23. Of the funds appropriated to the Department of Administration for the 2005-2006 fiscal year, the Director of the Budget shall transfer two hundred thousand dollars ($200,000) to the Commission on State Property established in Article 78 of Chapter 143 of the General Statutes.

COLLABORATION AMONG DEPARTMENTS OF ADMINISTRATION, HEALTH AND HUMAN SERVICES, JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND PUBLIC INSTRUCTION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE

SECTION 6.24.(a) School-Based Child and Family Team Initiative established. –

(1) Purpose and duties. – There is established the School-Based Child and Family Team Initiative. The purpose of the Initiative is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children shall share responsibility and accountability to improve outcomes for these children and their families. The Initiative shall be based on the following principles:

a. The development of a strong infrastructure of interagency collaboration;
b. One child, one team, one plan;
c. Individualized strengths-based care;
d. Accountability;
e. Cultural competence;
f. Children at risk of school failure or out-of-home placement may enter the system through any participating agency;
g. Services shall be specified, delivered, and monitored through a unified Child and Family Plan that is outcome-oriented and evaluation-based;

h. Services shall be the most efficient in terms of cost and effectiveness and shall be delivered in the most natural settings possible;

i. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable, permanent home, their schools, and their community; and

j. Families and consumers shall be involved in decision making throughout service planning, delivery, and monitoring.

(2) Program goals and services. – In order to ensure that children receiving services are appropriately served, the affected State and local agencies shall:

a. Increase capacity in the school setting to address the academic, health, mental health, social, and legal needs of children.

b. Ensure that children receiving services are screened initially to identify needs and assessed periodically to determine progress and sustained improvement in educational, health, safety, behavioral, and social outcomes.

c. Develop uniform screening mechanisms and a set of outcomes that are shared across affected agencies to measure children's progress in home, school, and community settings.

d. Promote practices that are known to be effective based upon research or national best practice standards.

e. Review services provided across affected State agencies to ensure that children's needs are met.

f. Eliminate cost shifting and facilitate cost-sharing among governmental agencies with respect to service development, service delivery, and monitoring for participating children and their families.

g. Participate in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and health, director of the local management entity, the chief district court judge, and the chief district court counselor.

(3) Local level responsibilities. – In coordination with the North Carolina Child and Family Leadership Council (Council), the local board of education shall establish the School-Based Child and Family Team Initiative (Initiative) at designated schools and shall appoint the Child and Family Team Leaders who shall be a school nurse and a school social worker. Each local management entity that has any selected schools in its catchment area shall appoint a Care Coordinator, and any department of social services that has a selected school in its catchment area shall appoint a Child and Family Teams Facilitator. The Care Coordinators and Child and Family Team Facilitators shall have as their sole responsibility working with the selected schools in their catchment areas and shall provide training to school-based personnel, as required. The Child and Family Team Leaders shall identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal,

emotional, or developmental factors. Based on the screening results, responsibility for developing, convening, and implementing the Child and Family Team Initiative is as follows:

a. School personnel shall take the lead role for those children and their families whose primary unmet needs are related to academic achievement.
b. The local management entity shall take the lead role for those children and their families whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
c. The local department of public health shall take the lead role for those children and their families whose primary unmet needs are health-related.
d. Local departments of social services shall take the lead for those children and their families whose primary unmet needs are related to child welfare, abuse, or neglect.
e. The chief district court counselor shall take the lead for those children and their families whose primary unmet needs are related to juvenile justice issues.

A representative from each named or otherwise identified publicly supported children's agency shall participate as a member of the Team as needed. Team members shall coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

(4) Reporting requirements. – School-Based Child and Family Team Leaders shall provide data to the Council for inclusion in their report to the North Carolina General Assembly. The report shall include the following:

a. The number of and other demographic information on children screened and assigned to a team and a description of the services needed by and provided to these children;
b. The number of and information about children assigned to a team who are placed in programs or facilities outside the child's home or outside the child's county and the average length of stay in residential treatment;
c. The amount and source of funds expended to implement the Initiative;
d. Information on how families and consumers are involved in decision making throughout service planning, delivery, and monitoring;
e. Other information as required by the Council to evaluate success in local programs and ensure appropriate outcomes; and
f. Recommendations on needed improvements.

(5) Local advisory committee. – In each county with a participating school, the superintendent of the local LEA shall either identify an existing cross agency collaborative or council, or shall form a new group, to serve as a local advisory committee to work with the Initiative. Newly formed committees shall be chaired by the

superintendent and one other member of the committee to be elected by the committee. The local advisory committee shall include the directors of the county departments of social services and health, the directors of the local management entity, the chief district court judge, the chief district court counselor, and representatives of other agencies providing services to children, as designated by the Committee. The members of the Committee shall meet as needed to monitor and support the successful implementation of the School-Based Child and Family Team Initiative.

The Local Child and Family Team Advisory Committee may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

SECTION 6.24.(b) North Carolina Child and Family Leadership Council. –

(1) Leadership Council established; location. – There is established the North Carolina Child and Family Leadership Council (Council). The Council shall be located within the Department of Administration for organizational and budgetary purposes.

(2) Purpose. – The purpose of the Council is to review and advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure the active participation and collaboration in the Initiative by all State agencies and their local counterparts providing services to children in participating counties in order to increase the academic success and reduce out-of-home and out-of-county placements of children at risk of academic failure.

(3) Membership. – The Superintendent of Public Instruction and the Secretary of Health and Human Services shall serve as cochairs of the Council. Council membership shall include the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chairman of the State Board of Education, the Director of the Administrative Office of the Courts, and other members as appointed by the Governor.

(4) The Council shall:

a. Sign an annual memorandum of agreement (MOA) among the named State agencies to define the purposes of the program and to ensure that program goals are accomplished.

b. Resolve State policy issues, as identified at the local level, which interfere with effective implementation of the School-Based Child and Family Team Initiative.

c. Direct the integration of resources, as needed, to meet goals and ensure that the Initiative promotes the most effective and efficient use of resources and eliminates duplication of effort.

d. Establish criteria for defining success in local programs and ensure appropriate outcomes.

e. Develop an evaluation process, based on expected outcomes, to ensure the goals and objectives of this Initiative are achieved.

f. Review progress made on integrating policies and resources across State agencies, reaching expected outcomes, and accomplishing other goals.

g. Report semiannually, on January 1 and July 1, on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division of the Legislative Services Office.

The Council may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

SECTION 6.24.(c) Department of Health and Human Services. – The Secretary of the Department of Health and Human Services shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

SECTION 6.24.(d) Department of Juvenile Justice and Delinquency Prevention. – The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

SECTION 6.24.(e) Administrative Office of the Courts. – The Director of the Administrative Office of the Courts shall ensure that the Office collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

SECTION 6.24.(f) Department of Public Instruction. – The Superintendent of Public Instruction shall ensure that the Department collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

LIMIT DISPOSITION OF DOROTHEA DIX AND BLUE RIDGE ROAD PROPERTIES

SECTION 6.25.(a) G.S. 146-27 reads as rewritten:

"§ **146-27. The role of the Department of Administration in sales, leases, and ~~rentals.~~rentals; approval by General Assembly.**

(a) General. ~~– Every~~ Except as otherwise provided by this section, every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(c) Exceptions. – Notwithstanding any other provision of law, the following State-owned property shall not be sold, leased, rented, or otherwise disposed of without the prior approval of the General Assembly:

(1) The property encompassing the Dorothea Dix Hospital campus.

(2) The property described in the 1995 Capital Area Master Plan for State Government, Blue Ridge Road Area, developed by O'Brien/Atkins, except for the Special Development District."

SECTION 6.25.(b) G.S. 143-341(4)g reads as rewritten:

"§ **143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

…

(4) Real Property Control:

…

g. ~~To~~ Except as otherwise provided by this sub-subdivision, to allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an appraised value of at least twenty-five thousand dollars ($25,000), the reallocation may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

Notwithstanding any other provision of law, the following State-owned property shall not be allocated or reallocated without the prior approval of the General Assembly:

1. The property encompassing the Dorothea Dix Hospital campus.
2. The property described in the 1995 Capital Area Master Plan for State Government, Blue Ridge Road Area, developed by O'Brien/Atkins, except for the Special Development District."

SECTION 6.25.(c) This section expires September 1, 2007.

NO FUNDS BUDGETED FOR REPLACED EQUIPMENT

SECTION 6.27. Once a State agency has purchased and installed equipment that performs the same function as equipment it leases, the agency shall not continue to budget funds for leased equipment that it no longer needs.

HEALTH BENEFIT PLAN CO-PAYMENTS

SECTION 6.29. G.S. 58-50-30(a3) reads as rewritten:

"(a3) Whenever any health benefit plan, subscriber contract, or policy of insurance issued by a health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of the chiropractor's practice as defined in G.S. 90-151 unless a comparable limitation is imposed on the medically necessary treatment if performed or authorized by any other duly licensed physician. An insurer shall not impose as a limitation on treatment or level of coverage a co-payment amount charged to the insured for chiropractic services that is higher than the co-payment amount charged to the insured

for the services of a duly licensed primary care physician for the same medically necessary treatment or condition."

PLANNING FOR BETTER COLLECTION OF INFRASTRUCTURE INFORMATION

SECTION 6.33.(a) The Office of State Budget and Management shall conduct a study to determine the best methods for collecting, managing, and providing access to information about technology, water, sewer, and other modern infrastructures needed to assist communities in becoming and remaining economically viable.

SECTION 6.33.(b) The Office of State Budget and Management shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly. The report shall include legislative proposals, including a proposal to define the term "infrastructure" in the General Statutes to include modern communication technologies.

ZERO-BASED BUDGET REVIEW

SECTION 6.34.(a) The General Assembly finds that the traditional method of budgeting focuses only on expansion adjustments to the previous year's expenditures. This method of budgeting may no longer be sufficient to manage the competing demands of North Carolina's complex budget, its rapidly expanding education and health care expenditures, and the need to foster economic development. To meet the State's growing needs, it is necessary to examine new approaches to budgeting and management.

SECTION 6.34.(b) The Legislative Services Commission is hereby authorized to undertake no more than two zero-based budget reviews prior to the convening of the 2007 General Assembly. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall select the two departments for review.

SECTION 6.34.(c) In conducting a zero-based budget review, the Commission may consider the following:

(1) The activities that comprise the department's budget, and a justification for the existence of each activity by reference to the constitution, federal and State statutes, case law, administrative rules, and departmental practices.

(2) For each activity within the department, a quantitative estimate of any adverse impacts that could reasonably be expected should the activity be discontinued, together with a full description of the methods by which the expected adverse impacts were measured.

(3) For each activity within the department, the account of expenditures that would be required to maintain the activity at the minimum level of service required by law.

(4) For each activity within the department, an itemized account of expenditures required to maintain the activity at current levels of service, together with a concise statement of the quantity and quality of services being provided.

(5) A ranking of all activities of the department that shows the relative contribution of each activity to the overall goals and purposes of the agency at current service levels.

(6) Other issues the Commission deems appropriate for the budget review.

PAYROLL DEDUCTION FOR EMPLOYEES' ASSOCIATIONS

SECTION 6.35. G.S. 143-3.3(g) reads as rewritten:

"(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. – An employee of the State or any of its political subdivisions, institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, ~~the majority~~ 500 of whom are employees of the ~~State~~ State, a political subdivision of the State, or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education."

STUDY CONSOLIDATION OF STATE LABORATORIES

SECTION 6.36.(a) The Office of State Budget and Management shall develop a plan to consolidate all State-funded laboratories. This plan will augment capital and space-allocation plans already developed for the new laboratories.

The State-funded laboratories to be considered for consolidation include the Public Health State Laboratory within the Department of Health and Human Services, the Agricultural Laboratory within the Department of Agriculture and Consumer Services, Veterinary Division, and the State Bureau of Investigation Crime Laboratories within the Department of Justice. The Office of State Budget and Management shall hire an independent consultant to conduct the study and develop the consolidation plan. The study shall include the feasibility of consolidating these laboratory functions and the identification of any duplicative functions.

SECTION 6.36.(b) The consolidation plan shall include a cost analysis for consolidating facilities and staff and eliminating duplicative services. The plan shall assure that confidentiality of shared data is not compromised and that the chain of custody of evidence is maintained for forensic evidence sent to the laboratory for analysis. The plan shall also assure that all laboratory functions will continue to receive certification in each field now certified and to conform with federal rules and regulations governing the laboratories' eligibility for federal grant funds. The plan shall include recommendations to privatize laboratory functions that can be more efficiently performed by non-State entities.

SECTION 6.36.(c) The Office of State Budget and Management shall submit a complete report of the study findings and recommendations to the General Assembly and the Fiscal Research Division no later than May 1, 2006.

CIVIL PENALTY AND FORFEITURE FUND

AVAILABILITY STATEMENT

SECTION 6.37.(a) Availability. – The availability used to support appropriations made in this act from the Civil Penalty and Forfeiture Fund is based upon estimated collections of fines and forfeitures from the agencies and in the amounts listed below:

	FY 2005-2006	**FY 2006-2007**
Department of Revenue	$ 80,000,000	$ 85,000,000
Department of Transportation	$ 15,000,000	$ 15,000,000
Employment Security Commission	$ 3,000,000	$ 3,000,000
Department of Insurance	$ 3,000,000	$ 3,000,000
University of North Carolina	$ 5,000,000	$ 5,000,000
Other Agencies	$ 14,500,000	$ 14,500,000
Total Funds Available	**$ 120,500,000**	**$ 125,500,000**

CIVIL PENALTY AND FORFEITURE FUNDS APPROPRIATIONS

SECTION 6.37.(b) Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2007, as follows:

	2005-2006	**2006-2007**
School Technology Fund	$ 18,000,000	$ 18,000,000
State Public School Fund	$ 102,500,000	$ 107,500,000
Total Appropriation	$ 120,500,000	$ 125,500,000

Funds appropriated pursuant to this section shall be allotted, on behalf of the counties, to local school administrative units on a per pupil basis.

SECTION 6.37.(c) Shortfall. – If funds accruing to the Civil Penalty and Forfeiture Fund are not adequate for the appropriations set out in subsection (b) of this section, the Director of the Budget shall use funds available in the State Public School Fund for each fiscal year to offset the shortfall.

SECTION 6.37.(d) Unappropriated Funds. – Except as provided in subsection (f) of this section, if funds accruing to the Civil Penalty and Forfeiture Fund for the 2005-2006 fiscal year or the 2006-2007 fiscal year from agencies or pursuant to a settlement agreement or court order exceed the amounts appropriated in subsection (b) of this section, the excess funds shall remain in the Fund until appropriated by the General Assembly.

SECTION 6.37.(e) G.S. 105-164.44D does not apply in either the 2005-2006 or 2006-2007 fiscal years.

SECTION 6.37.(f) Overrealized Funds from the Department of Transportation. - If funds deposited in the Civil Penalty and Forfeiture Fund for the 2005-2006 fiscal year or the 2006-2007 fiscal year by the Department of Transportation exceed the amount projected in subsection (a) of this section, the Director of the Budget shall authorize the use of these excess funds to offset Highway Fund appropriations to the Department of Public Instruction for the State Public School Fund. These excess funds are hereby appropriated from the Civil Penalty and Forfeiture Fund to the State Public School Fund for the 2005-2006 and the 2006-2007 fiscal years to offset such Highway Fund appropriations and shall be allocated in accordance with G.S. 115C-457.3, except that for the drivers education program it is allocated per pupil for those in

that program in the public schools. The Director of the Budget shall decrease the amount of Highway Funds appropriated for driver education for the 2005-2006 and the 2006-2007 fiscal years by corresponding amounts.

SECTION 6.37.(g) G.S. 115C-457.3 reads as rewritten:

"§ **115C-457.3. ~~Transfer of funds to the State School Technology Fund.~~Appropriation of moneys in the Fund.**

~~The Office of State Budget and Management shall transfer funds accruing to the Civil Penalty and Forfeiture Fund to the State School Technology Fund. These funds shall be allocated to counties on the basis of average daily membership. These funds shall be distributed to the counties to be allocated to the public schools, including charter schools, in the same manner as provided under G.S. 115C-452.~~

(a) The General Assembly shall appropriate moneys in the Civil Penalty and Forfeiture Fund in the Current Operations Appropriations Act. These appropriations shall be made to the State Public School Fund for allotment by the State Board of Education, on behalf of the counties, to local school administrative units on a per pupil basis in accordance with Article IX, Section 7(b) of the North Carolina Constitution.

(b) In accordance with subsection (a) of this section, the State Board of Education shall allocate these funds according to the allotted average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board pursuant to G.S. 115C-430."

SECTION 6.37.(h) G.S. 96-5(c) reads as rewritten:

"(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All ~~interest and penalties,~~interest, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Commission for the administration of this Chapter. Said fund shall be used by the Commission for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the Commission for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for Commission business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of Commission business; and (iii) the temporary stabilization of federal funds cash flow. The Employment Security Commission may use funds either from the Special Employment Security Commission Administration Fund created by this subsection or from federal funds, or from a combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the Executive Budget Act (G.S. 143-1 et seq.) and the

Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this section."

SECTION 6.37.(i) G.S. 96-6.1(a) reads as rewritten:

"(a) Contribution. – A mandatory training and reemployment contribution is levied upon employers at a percentage rate of the amount of the employer's unemployment insurance contributions due under G.S. 96-9. The rate is the lesser of (i) twenty percent (20%) or (ii) a percentage of the unemployment insurance contributions that yields an amount that, when added to the amount of the employer's unemployment insurance contributions due for the taxable period, is no greater than five and seven-tenths percent (5.7%) of wages for employment for the taxable period. The purpose of the training and reemployment contribution is to provide funds for Department of Community College training programs, Employment Security Commission reemployment services, administration and collection of the new contribution, and other needs of the State. The training and reemployment contribution is due and payable at the time and in the same manner as the unemployment insurance contributions under G.S. 96-9. The training and reemployment contribution does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Unemployment Insurance Fund equals or is less than nine hundred million dollars ($900,000,000) or if at any time during the 12 months preceding August 1, the State unemployment rate rises above four and three-tenths percent (4.3%). The collection of the training and reemployment contribution, the assessment of interest and penalties on unpaid contributions under this section, the filing of judgment liens, and the enforcement of the liens for unpaid contributions under this section are governed by the provisions of G.S. 96-10 where applicable.

Training and reemployment contributions collected under this section shall be credited to the Employment Security Commission Training and Employment Account created in this section, and refunds of these contributions shall be paid from the same account. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any interest ~~or penalties~~ collected on unpaid contributions under this section shall be credited to the Special Employment Security Administration Fund, and any interest ~~or penalties~~ refunded on contributions imposed by this section shall be paid from the same Fund."

SECTION 6.37.(j) G.S. 96-9(b)(3)j. reads as rewritten:

"j. A tax is imposed upon contributions at the rate of twenty percent (20%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the

contributions. The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Reserve Fund equals or exceeds one hundred sixty-three million three hundred forty-nine thousand dollars ($163,349,000), which is one percent (1%) of taxable wages for calendar year 1984. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes is governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this subpart shall be credited to the Employment Security Commission Reserve Fund, and refunds of the taxes shall be paid from the same Fund. The clear proceeds of any civil penalties collected under this subpart shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any interest ~~or penalties~~ collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest ~~or penalties~~ refunded on taxes imposed by this subpart shall be paid from the same Fund."

SECTION 6.37.(k) G.S. 96-10(a) reads as rewritten:

"(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate set under G.S. 105-241.1(i) per month from and after that date until payment plus accrued interest is received by the Commission. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. ~~Penalties and interest~~ The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Commission, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States."

SECTION 6.37.(l) G.S. 105-163.15 reads as rewritten:

"§ **105-163.15. Failure by individual to pay estimated income tax; ~~penalty.~~interest.**

(a) In the case of any underpayment of the estimated tax by an individual, the Secretary shall assess ~~a penalty~~ interest in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment.

…

(f) No ~~addition to the tax~~ interest shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Part 2 of Article 4 for the preceding taxable year.

…

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no ~~addition to tax~~ interest shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

(1) One installment. – The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable year. The amount of the installment payment must be the lesser of:

a. Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or

b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(2) Exception. – If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no ~~addition to tax~~interest is imposed under subsection (a) of this section with respect to any underpayment of the required installment for the taxable year.

(3) Eligibility. – An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

…."

SECTION 6.37.(m) G.S. 105-163.41 reads as rewritten:

"§ **105-163.41. ~~Penalty for underpayment.~~Underpayment.**

(a) Except as provided in subsection (d), if the amount of estimated tax paid by a corporation during the taxable year is less than the amount of tax imposed upon the corporation under Article 4 of this Chapter for the taxable year, the corporation must be assessed ~~an additional tax as a penalty~~interest in an amount determined by multiplying the amount of the underpayment as determined under subsection (b), for the period of the underpayment as determined under subsection (c), by the percentage established as the rate of interest on assessments under G.S. 105-241.1(i) that is in effect for the period of the underpayment. For the purpose of this section, the amount of tax imposed under Article 4 of this Chapter is the net amount after subtracting the credits against the tax allowed by this Chapter other than the credit allowed by this Article.

…

(d) Except as provided in subdivision (5) of this subsection, the ~~penalty~~ interest for underpayment imposed by this section shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installments equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax was equal to the least of:

(1) The tax shown on the return of the corporation for the preceding taxable year, if the corporation filed a return for the preceding taxable year and the preceding year was a taxable year of 12 months;

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or

(3) An amount equal to ninety percent (90%) of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the 4th month;

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the 6th month;

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the 9th month; and

d. For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(4) For purposes of this subdivision, the taxable income shall be placed on an annualized basis by multiplying by 12 the taxable income referred to in the preceding sentence, and dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11 as the case may be) referred to in that sentence.

(5) In the case of a large corporation, as defined in section 6655 of the Code, subdivisions (1) and (2) of this subsection shall not apply."

SECTION 6.37.(n) G.S. 105-236 reads as rewritten:

"§ **105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

…."

SECTION 6.37.(o) G.S. 20-118(e) is amended by adding a new subdivision to read:

"(7) The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6.37.(p) G.S. 20-309 is amended by adding a new subsection to read:

"(g) Penalties. – The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6.37.(q) G.S. 20-79 is amended by adding a new subsection to read:

"(g) Penalties. – The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section

shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6.37.(r) G.S. 116-44.4(m) reads as rewritten:

"(m) All moneys received pursuant to this ~~Part~~ Part, except for the clear proceeds of all civil penalties collected pursuant to subsection (h) of this section, shall be placed in a trust account in each constituent institution and may be used for any of the following purposes:

(1) To defray the cost of administering and enforcing ordinances adopted under this Part;
(2) To develop, maintain, and supervise parking areas and facilities;
(3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
(4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;
(5) Other purposes related to parking, traffic, and transportation on the campus.

The clear proceeds of all civil penalties collected pursuant to subsection (h) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6.37.(s) G.S. 130A-248 reads as rewritten:

"§ **130A-248. Regulation of food and lodging establishments.**

…

(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of fifty dollars ($50.00). ~~The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended.~~ The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities.

(d1) The Department shall charge a twenty-five dollar ($25.00) late payment fee to any establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, that fails to pay the fee required by subsection (d) of this section within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any establishment

that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection.

The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

…."

SECTION 6.37.(t) G.S. 130A-291.1(e2) reads as rewritten:

"(e2) A properly completed application for a permit and the annual fee under this section are due by 1 January of each year. The Department shall mail a notice of the annual fees to each permitted septage management firm and each individual who operates a septage treatment or disposal facility prior to 1 November of each calendar year. A late fee in the amount equal to fifty percent (50%) of the annual permit fee under this section shall be submitted when a properly completed application and annual permit fee are not submitted by 1 January following the 1 November notice. The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6.37.(u) G.S. 54-109.15(b) reads as rewritten:

"§ **54-109.15. Reports.**

(a) Credit unions organized under Articles 14A to 14L of this Chapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions on forms supplied for that purpose. Additional reports may be required.

(b) Any credit union that neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall pay a late penalty to the Administrator of Credit Unions of seventy-five dollars ($75.00) for each day the neglect continues. The Administrator of Credit Unions may revoke the certificate of incorporation and take possession of the assets and business of any credit union failing to pay a penalty imposed under this section after serving notice of at least 15 days upon the credit union of the proposed action. ~~Penalties collected under this section shall be credited to the special account established under G.S. 54-109.14.~~The clear proceeds of penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6.37.(v) Effective July 1, 2006, G.S. 115C-457.2 reads as rewritten:

"§ **115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ~~ten percent (10%)~~ twenty percent (20%) of the amount collected."

SECTION 6.37.(w) The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006.

REPORTS ON PERSONAL SERVICES CONTRACTS

SECTION 6.38. G.S. 143-64.70 reads as rewritten:

"§ **143-64.70. Personal service contracts – reporting requirements.**

(a) By ~~January 1, 2002, and quarterly thereafter,~~ January 1 of each year, each State department, agency, and institution shall make a detailed written report to the Office of State Budget and Management and the Office of State Personnel on its utilization of personal services ~~contracts.~~contracts that have an annual expenditure greater than five thousand dollars ($5,000). The report by each State department, agency, and institution shall include the following:

(1) The total number of personal services contractors in service during the reporting period.
(2) The type, duration, status, and cost of each contract.
(3) The number of contractors utilized per contract.
(4) A description of the functions and projects requiring contractual services.
(5) The number of contractors for each function or project.
(6) Identification of the State employee responsible for oversight of the performance of each contract and the number of contractors reporting to each contract manager or supervisor.
(7) The budget code, fund number, and expenditure account number from which the contract funds were disbursed.

(b) By ~~March 15, 2002, and biannually thereafter,~~March 15 of each year, the Office of State Budget and Management and the Office of State Personnel shall compile and analyze the information required under subsection (a) of this section and shall submit to the Joint Legislative Commission on Governmental Operations a detailed report on the type, number, duration, cost and effectiveness of State personal services contracts throughout State government."

PART VII. PUBLIC SCHOOLS

TEACHER SALARY SCHEDULES

SECTION 7.1.(a) Effective for the 2005-2006 school year, the Director of the Budget shall transfer from the Reserve for Experience Step Salary Increase for Teachers and Principals in Public Schools funds necessary to implement the teacher salary schedules set out in subsection (b) of this section and for longevity in accordance with subsection (d) of this section, including funds for the employer's retirement and social security contributions for all teachers whose salaries are supported from the State's General Fund.

These funds shall be allocated to individuals according to rules adopted by the State Board of Education.

SECTION 7.1.(b) The following monthly salary schedules shall apply for the 2005-2006 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

2005-2006 Monthly Salary Schedule
"A" Teachers

Years of Experience	"A" Teachers	NBPTS Certification

0	$2,551	N/A
1	$2,593	N/A
2	$2,637	N/A
3	$2,793	$3,128
4	$2,933	$3,285
5	$3,067	$3,435
6	$3,196	$3,580
7	$3,300	$3,696
8	$3,348	$3,750
9	$3,397	$3,805
10	$3,447	$3,861
11	$3,496	$3,916
12	$3,547	$3,973
13	$3,598	$4,030
14	$3,651	$4,089
15	$3,705	$4,150
16	$3,760	$4,211
17	$3,815	$4,273
18	$3,874	$4,339
19	$3,932	$4,404
20	$3,990	$4,469
21	$4,052	$4,538
22	$4,113	$4,607
23	$4,179	$4,680
24	$4,243	$4,752
25	$4,308	$4,825
26	$4,374	$4,899
27	$4,442	$4,975
28	$4,513	$5,055
29+	$4,584	$5,134

2005-2006 Monthly Salary Schedule
"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	$2,806	N/A
1	$2,852	N/A
2	$2,901	N/A
3	$3,072	$3,441
4	$3,226	$3,613
5	$3,374	$3,779
6	$3,516	$3,938
7	$3,630	$4,066
8	$3,683	$4,125
9	$3,737	$4,185
10	$3,792	$4,247

11	$3,846	$4,308
12	$3,902	$4,370
13	$3,958	$4,433
14	$4,016	$4,498
15	$4,076	$4,565
16	$4,136	$4,632
17	$4,197	$4,701
18	$4,261	$4,772
19	$4,325	$4,844
20	$4,389	$4,916
21	$4,457	$4,992
22	$4,524	$5,067
23	$4,597	$5,149
24	$4,667	$5,227
25	$4,739	$5,308
26	$4,811	$5,388
27	$4,886	$5,472
28	$4,964	$5,560
29+	$5,042	$5,647

SECTION 7.1.(c) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 7.1.(d) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 7.1.(e) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three

dollars ($253.00) per month in addition to the compensation provided for certified psychologists.

SECTION 7.1.(f) Speech pathologists who are certified as speech pathologists at the masters degree level and audiologists who are certified as audiologists at the masters degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

SECTION 7.1.(g) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 7.1.(h) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 7.2.(a) Effective for the 2005-2006 school year, the Director of the Budget shall transfer from the Reserve for Compensation Increases funds necessary to implement the salary schedules for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

SECTION 7.2.(b) The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2005-2006 fiscal year, commencing July 1, 2005, is as follows:

2005-2006
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	$3,259	-	-	-	-
5	$3,408	-	-	-	-
6	$3,551	-	-	-	-
7	$3,666	-	-	-	-
8	$3,719	$3,719	-	-	-
9	$3,773	$3,773	-	-	-
10	$3,829	$3,829	$3,885	-	-
11	$3,885	$3,885	$3,941	-	-
12	$3,941	$3,941	$3,997	$4,056	-
13	$3,997	$3,997	$4,056	$4,115	$4,178
14	$4,056	$4,056	$4,115	$4,178	$4,240
15	$4,115	$4,115	$4,178	$4,240	$4,303
16	$4,178	$4,178	$4,240	$4,303	$4,368
17	$4,240	$4,240	$4,303	$4,368	$4,432

18	$4,303	$4,303	$4,368	$4,432	$4,502
19	$4,368	$4,368	$4,432	$4,502	$4,570
20	$4,432	$4,432	$4,502	$4,570	$4,643
21	$4,502	$4,502	$4,570	$4,643	$4,713
22	$4,570	$4,570	$4,643	$4,713	$4,786
23	$4,643	$4,643	$4,713	$4,786	$4,860
24	$4,713	$4,713	$4,786	$4,860	$4,936
25	$4,786	$4,786	$4,860	$4,936	$5,013
26	$4,860	$4,860	$4,936	$5,013	$5,094
27	$4,936	$4,936	$5,013	$5,094	$5,195
28	$5,013	$5,013	$5,094	$5,195	$5,299
29	$5,094	$5,094	$5,195	$5,299	$5,406
30	$5,195	$5,195	$5,299	$5,406	$5,514
31	$5,299	$5,299	$5,406	$5,514	$5,624
32	-	$5,406	$5,514	$5,624	$5,736
33	-	-	$5,624	$5,736	$5,851
34	-	-	$5,736	$5,851	$5,969
35	-	-	-	$5,969	$6,087
36	-	-	-	$6,087	$6,210
37	-	-	-	-	$6,334

2005-2006
Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	PrinV (44-54)	PrinVI (55-65)	PrinVII (66-100)	PrinVIII (101+)
0-14	$4,303			
15	$4,368			
16	$4,432	$4,502		
17	$4,502	$4,570	$4,713	
18	$4,570	$4,643	$4,786	$4,860
19	$4,643	$4,713	$4,860	$4,936
20	$4,713	$4,786	$4,936	$5,013
21	$4,786	$4,860	$5,013	$5,094
22	$4,860	$4,936	$5,094	$5,195
23	$4,936	$5,013	$5,195	$5,299
24	$5,013	$5,094	$5,299	$5,406
25	$5,094	$5,195	$5,406	$5,514
26	$5,195	$5,299	$5,514	$5,624
27	$5,299	$5,406	$5,624	$5,736
28	$5,406	$5,514	$5,736	$5,851
29	$5,514	$5,624	$5,851	$5,969
30	$5,624	$5,736	$5,969	$6,087
31	$5,736	$5,851	$6,087	$6,210
32	$5,851	$5,969	$6,210	$6,334
33	$5,969	$6,087	$6,334	$6,461
34	$6,087	$6,210	$6,461	$6,590

35	$6,210	$6,334	$6,590	$6,721
36	$6,334	$6,461	$6,721	$6,855
37	$6,461	$6,590	$6,855	$6,992
38	$6,590	$6,721	$6,992	$7,132
39		$6,855	$7,132	$7,274
40		$6,992	$7,274	$7,420
41			$7,420	$7,568

SECTION 7.2.(c) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 7.2.(d) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 7.2.(e) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars ($126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars ($253.00) per month.

SECTION 7.2.(f) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 7.2.(g) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be

placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 7.2.(h) Participants in an approved full-time masters in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the masters program. For the 2005-2006 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time masters in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 7.2.(i) During the 2005-2006 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

CENTRAL OFFICE SALARIES

SECTION 7.3.(a) The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 2005-2006 fiscal year, beginning July 1, 2005.

School Administrator I	$2,932	$5,506
School Administrator II	$3,112	$5,840
School Administrator III	$3,303	$6,195
School Administrator IV	$3,436	$6,442
School Administrator V	$3,574	$6,702
School Administrator VI	$3,792	$7,108
School Administrator VII	$3,945	$7,394

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee.

SECTION 7.3.(b) The monthly salary ranges that follow apply to public school superintendents for the 2005-2006 fiscal year, beginning July 1, 2005.

Superintendent I	$4,187	$7,844
Superintendent II	$4,445	$8,318
Superintendent III	$4,716	$8,825
Superintendent IV	$5,005	$9,360

Superintendent V	$5,312	$9,931

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

SECTION 7.3.(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

SECTION 7.3.(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for under this section.

SECTION 7.3.(e) The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

SECTION 7.3.(f) The annual salary increase for all permanent full-time personnel paid from the Central Office Allotment who work a nine-, 10-, 11-, or 12-month work year schedule shall be the greater of eight hundred fifty dollars ($850.00) or two percent (2%), commencing July 1, 2005. The State Board of Education shall allocate these funds to local school administrative units. The local boards of education shall establish guidelines for providing salary increases to these personnel.

NONCERTIFIED PERSONNEL SALARY

SECTION 7.4.(a) The annual salary increase for permanent, full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be the greater of eight hundred fifty dollars ($850.00) or two percent (2%), commencing July 1, 2005.

SECTION 7.4.(b) Local boards of education shall increase the rates of pay for such employees who were employed for all or part of fiscal year 2004-2005 and who continue their employment for fiscal year 2005-2006 by providing an annual salary increase for employees of the greater of eight hundred fifty dollars ($850.00) or two percent (2%).

For part-time employees, the pay increase shall be pro rata based on the number of hours worked.

SECTION 7.4.(c) The State Board of Education may adopt salary ranges for noncertified personnel to support increases of the greater of eight hundred fifty dollars ($850.00) or two percent (2%) for the 2005-2006 fiscal year.

SECTION 7.4.(d) For the 2005-2006 fiscal year, permanent full-time employees who work a nine-, 10-, 11-, or 12-month work year schedule shall receive the eight hundred fifty dollars ($850.00) or the two percent (2%) annual increase provided by this act, whichever is greater.

BONUS FOR CERTIFIED PERSONNEL AT THE TOP OF THEIR SALARY SCHEDULES

SECTION 7.5. Effective July 1, 2005, any permanent certified personnel employed on July 1, 2003, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2005, any permanent personnel employed on July 1, 2004, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%).

For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus.

SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES

SECTION 7.6.(a) Funds for Supplemental Funding. – The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement. Therefore, funds are appropriated to State Aid to Local School Administrative Units for the 2005-2006 fiscal year and the 2006-2007 fiscal year to be used for supplemental funds for the schools.

SECTION 7.6.(b) Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks; (ii) for salary supplements for instructional personnel and instructional support personnel; and (iii) to pay an amount not to exceed ten thousand dollars ($10,000) of the plant operation contract cost charged by the Department of Public Instruction for services.

Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee. These reports shall specify how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools.

SECTION 7.6.(c) Definitions. – As used in this section:

(1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.

(2) "Anticipated total county revenue availability" means the sum of the:

a. Anticipated county property tax revenue availability,

b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,

c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and
d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

(3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.

(4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.

(5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.

(6) "County-adjusted property tax base" shall be computed as follows:
a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,
b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,
c. Add to the resulting amount the:
1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,
2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
3. Personal property value for the county.

(7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.

(8) "County wealth as a percentage of State average wealth" shall be computed as follows:
a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,
b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,
c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,
d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

(9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.

(10) "Effective State average tax rate" means the average of effective county tax rates for all counties.

(10a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(11) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

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

(13) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(14) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.

(14a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(15) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.6.(d) Eligibility for Funds. – Except as provided in subsection (h) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

SECTION 7.6.(e) Allocation of Funds. – Except as provided in subsection (g) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply

the county wealth as a percentage of State average wealth by the State average current expense appropriations per student.)

The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units.

If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

SECTION 7.6.(f) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

SECTION 7.6.(g) Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only.

This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

SECTION 7.6.(h) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2005-2007 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

SECTION 7.6.(i) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2006, if it determines that counties have supplanted funds.

SECTION 7.6.(j) Department of Revenue Reports. – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

SECTION 7.7.(a) Funds for Small School Systems. – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

(1) Round all fractions of positions to the next whole position.

(2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.

(3) Provide additional program enhancement teachers adequate to offer the standard course of study.

(4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.

(5) Provide a base for the consolidated funds allotment of at least seven hundred forty thousand seventy-four dollars ($740,074), excluding textbooks for the 2005-2006 fiscal year and a base of seven hundred forty thousand seventy-four dollars ($740,074) for the 2006-2007 fiscal year.

(6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

SECTION 7.7.(b) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2005-2007 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

SECTION 7.7.(c) Phase-Out Provisions. – If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be continued for five years after the unit becomes ineligible.

SECTION 7.7.(d) Definitions. – As used in this section:

(1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.

(2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

(2a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

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

(4) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

(4a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(5) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued

one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.7.(e) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2006, if it determines that counties have supplanted funds.

SECTION 7.7.(f) Use of Funds. – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee. These reports shall specify how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools.

DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING

SECTION 7.8.(a) Funds are appropriated in this act to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. Each local school administrative unit shall use funds allocated to it for disadvantaged student supplemental funding to implement a plan jointly developed by the unit and the LEA Assistance Program team. The plan shall be based upon the needs of students in the unit not achieving grade-level proficiency. The plan shall detail how these funds shall be used in conjunction with all other supplemental funding allotments such as Low-Wealth, Small County, At-Risk Student Services/Alternative Schools, and Improving Student Accountability, to provide instructional and other services that meet the educational needs of these students. Prior to the allotment of disadvantaged student supplemental funds, the plan shall be approved by the State Board of Education.

Funds received for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

(1) Provide instructional positions or instructional support positions and/or professional development;
(2) Provide intensive in-school and/or after-school remediation;
(3) Purchase diagnostic software and progress-monitoring tools; and
(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators.

SECTION 7.8.(b) Funds are appropriated in this act to evaluate the Disadvantaged Student Supplemental Funding Initiatives and Low-Wealth Initiatives. The State Board of Education shall use these funds to:

(1) Evaluate the strategies implemented by local school administrative units with Disadvantaged Student Supplemental Funds and Low-Wealth Funds and assess their impact on student performance; and

(2) Evaluate the efficiency and effectiveness of the technical assistance and support provided to local school administrative units by the Department of Public Instruction.

The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by February 15, 2006, and by January 15 of each subsequent year.

STUDENTS WITH LIMITED ENGLISH PROFICIENCY

SECTION 7.9.(a) The State Board of Education shall develop guidelines for identifying and providing services to students with limited proficiency in the English language.

The State Board shall allocate these funds to local school administrative units and to charter schools under a formula that takes into account the average percentage of students in the units or the charters over the past three years who have limited English proficiency. The State Board shall allocate funds to a unit or a charter school only if (i) average daily membership of the unit or the charter school includes at least 20 students with limited English proficiency or (ii) students with limited English proficiency comprise at least two and one-half percent (2.5%) of the average daily membership of the unit or charter school. For the portion of the funds that is allocated on the basis of the number of identified students, the maximum number of identified students for whom a unit or charter school receives funds shall not exceed ten and six-tenths percent (10.6%) of its average daily membership.

Local school administrative units shall use funds allocated to them to pay for classroom teachers, teacher assistants, tutors, textbooks, classroom materials/instructional supplies/equipment, transportation costs, and staff development of teachers for students with limited English proficiency.

A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds.

SECTION 7.9.(b) The Department of Public Instruction shall prepare a current head count of the number of students classified with limited English proficiency by December 1 of each year.

Students in the head count shall be assessed at least once every three years to determine their level of English proficiency. A student who scores "superior" on the standard English language proficiency assessment instrument used in this State shall not be included in the head count of students with limited English proficiency.

FLEXIBILITY FOR THE HIGHEST PRIORITY ELEMENTARY SCHOOLS

SECTION 7.10. The State Board of Education may allow high priority schools that have made high growth for three consecutive years to be removed from the list of high priority schools. If a local board of education chooses to have a school

removed from the list of high priority schools, the additional high priority funding for that school shall be discontinued.

AT-RISK STUDENT SERVICES/ALTERNATIVE SCHOOLS

SECTION 7.11. The State Board of Education may use up to two hundred thousand dollars ($200,000) of the funds in the Alternative Schools/At-Risk Student allotment each year for the 2005-2006 fiscal year and for the 2006-2007 fiscal year to implement G.S. 115C-12(24).

FUNDS FOR CHILDREN WITH DISABILITIES

SECTION 7.12. The State Board of Education shall allocate funds for children with disabilities on the basis of two thousand eight hundred thirty-eight dollars and thirty-nine cents ($2,838.39) per child for a maximum of 168,602 children for the 2005-2006 school year. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of the 2005-2006 allocated average daily membership in the local school administrative unit.

The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.13. The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of nine hundred twenty-six dollars and fifty-five cents ($926.55) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2005-2006 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 55,895 children for the 2005-2006 school year.

The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

EXPENDITURE OF FUNDS TO IMPROVE STUDENT ACCOUNTABILITY

SECTION 7.14.(a) Funds appropriated for the 2005-2006 and 2006-2007 fiscal years for Student Accountability Standards shall be used to assist students to perform at or above grade level in reading and mathematics in grades 3-8 as measured by the State's end-of-grade tests. The State Board of Education shall allocate these funds to LEAs based on the number of students who score at Level I or Level II on either reading or mathematics end-of-grade tests in grades 3-8. Funds in the allocation category shall be used to improve the academic performance of (i) students who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 or (ii) students who are performing at Level I or II on the writing tests in grades 4 and 7. These funds may also be used to improve the academic performance of students who are performing at Level I or II on the high school end-of-course tests. These funds shall not be transferred to other allocation categories or otherwise used for other

purposes. Except as otherwise provided by law, local boards of education may transfer other funds available to them into this allocation category.

The principal of a school receiving these funds, in consultation with the faculty and the site-based management team, shall implement plans for expending these funds to improve the performance of students.

Local boards of education are encouraged to use federal funds such as Title I Comprehensive School Reform Development Funds and to examine the use of State funds to ensure that every student is performing at or above grade level in reading and mathematics.

These funds shall be allocated to local school administrative units for the 2005-2006 fiscal year within 30 days of the date this act becomes law.

SECTION 7.14.(b) Funds appropriated for Student Accountability Standards shall not revert at the end of each fiscal year but shall remain available for expenditure until August 31 of the subsequent fiscal year.

LITIGATION RESERVE FUNDS

SECTION 7.15. The State Board of Education may expend up to five hundred thousand dollars ($500,000) each year for the 2005-2006 and 2006-2007 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to pending litigation.

BASE BUDGET REDUCTION TO DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.16. Notwithstanding any other provision of law, the Department of Public Instruction may use salary reserve funds and other funds and may transfer funds within the Department's continuation budget to implement budget reductions for the 2005-2006 fiscal year.

REPLACEMENT SCHOOL BUSES FUNDS

SECTION 7.17.(a) The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

(1) The local board of education shall use the funds only to make the first, second, or third year's payment on a financing contract entered into pursuant to G.S. 115C-528.

(2) The term of a financing contract entered into under this section shall not exceed three years.

(3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.

(4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.

(5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.

(6) Any other condition the State Board of Education considers appropriate.

SECTION 7.17.(b) Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

EXPENDITURES FOR DRIVING ELIGIBILITY CERTIFICATES

SECTION 7.18. G.S. 115C-12(28) reads as rewritten:

"§ **115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

…

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. – The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.

c. To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates."

DISCREPANCIES BETWEEN ANTICIPATED AND ACTUAL ADM

SECTION 7.19.(a) If the State Board of Education does not have sufficient resources in the ADM Contingency Reserve line item to make allotment adjustments in accordance with the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual, the State Board of Education may use funds appropriated to State Aid for Public Schools for this purpose.

SECTION 7.19.(b) If the higher of the first or second month average daily membership in a local school administrative unit is at least two percent (2%) or 100 students lower than the anticipated average daily membership used for allotments for the unit, the State Board of Education shall reduce allotments for the unit. The reduced allotments shall be based on the higher of the first or second month average daily membership plus one-half of the number of students overestimated in the anticipated average daily membership.

The allotments reduced pursuant to this subsection shall include only those allotments that may be increased pursuant to the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual.

CHARTER SCHOOL ADVISORY COMMITTEE/CHARTER SCHOOL EVALUATION

SECTION 7.20. The State Board of Education may spend up to fifty thousand dollars ($50,000) a year from State Aid to Local School Administrative Units for the 2005-2006 and 2006-2007 fiscal years to continue support of a charter school advisory committee and to continue to evaluate charter schools.

MENTOR TEACHER FUNDS MAY BE USED FOR FULL-TIME MENTORS

SECTION 7.21.(a) The State Board of Education shall grant flexibility to a local board of education regarding the use of mentor funds to provide mentoring support, provided the local board submits a detailed plan on the use of the funds to the State Board and the State Board approves that plan. The plan shall include information on how all mentors in the local school administrative unit have been or will be adequately trained to provide mentoring support.

Local boards of education shall use funds allocated for mentor teachers to provide mentoring support to all State-paid newly certified teachers, second-year teachers who were assigned mentors during the prior school year, and entry-level instructional support personnel who have not previously been teachers.

SECTION 7.21.(b) The State Board, after consultation with the Professional Teaching Standards Commission, shall adopt standards for mentor training.

SECTION 7.21.(c) Each local board of education with a plan approved pursuant to subsection (a) of this section shall report to the State Board on the impact of its mentor program on teacher retention. The State Board shall analyze these reports to determine the characteristics of mentor programs that are most effective in retaining teachers and shall report its findings to the Joint Legislative Education Oversight Committee by October 15, 2006.

SECTION 7.21.(d) In addition to the report required in subsection (c) of this section, the State shall also evaluate the effectiveness of a representative sample of local mentor programs and report on its findings to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2006. The evaluation shall focus on quantitative evidence, quality of service delivery, and satisfaction of those involved. The report shall include the results of the evaluation and recommendations both for improving mentor programs generally and for an appropriate level of State support for mentor programs.

VISITING INTERNATIONAL EXCHANGE TEACHERS

SECTION 7.22.(a) G.S. 115C-105.25(b) is amended by adding a new subdivision to read:

"(5a) Positions allocated for classroom teachers may be converted to dollar equivalents to contract for visiting international exchange teachers. These positions shall be converted at the statewide average salary for classroom teachers, including benefits. The converted funds shall be used only to cover the costs associated with bringing visiting international exchange teachers to the local school administrative unit through a State-approved visiting international exchange teacher program and supporting the visiting exchange teachers."

SECTION 7.22.(b) The Visiting International Faculty Program is a State-approved visiting international exchange teacher program.

FUNDS TO IMPLEMENT THE ABCS OF PUBLIC EDUCATION

SECTION 7.23.(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2004-2005 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

(1) Incentive awards in schools that achieve higher than expected improvements may be:
   a. Up to one thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and
   b. Up to five hundred dollars ($500.00) for each teacher assistant.

(2) Incentive awards in schools that meet the expected improvements may be:
   a. Up to seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and
   b. Up to three hundred seventy-five dollars ($375.00) for each teacher assistant.

SECTION 7.23.(b) The State Board of Education may use funds appropriated to the State Public School Fund for assistance teams to low-performing schools.

LEA ASSISTANCE PROGRAM

SECTION 7.24. Of the funds appropriated to the State Public School Fund, the State Board of Education shall use five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year to provide assistance to the State's low-performing Local School Administrative Units (LEAs) and to assist schools in meeting adequate yearly progress in each subgroup identified in the No Child Left Behind Act of 2001. The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee on the expenditure of these funds by May 15, 2006, and by December 15, 2007. The report shall contain: (i) the criteria for selecting LEAs and schools to receive assistance, (ii) measurable goals and objectives for the assistance program, (iii) an explanation of the assistance provided, (iv) findings from the assistance program, (v) actual expenditures by category, (vi) recommendations for the continuance of this program, and (vii) any other information the State Board deems necessary. These funds shall not revert at the end of each fiscal year but shall remain available until expended for this purpose.

FUNDS FOR THE TESTING AND IMPLEMENTATION OF THE NEW STUDENT INFORMATION SYSTEM

SECTION 7.25.(a) Funds appropriated for the Uniform Education Reporting System shall not revert at the end of the 2005-2006 and 2006-2007 fiscal years but shall remain available until expended.

SECTION 7.25.(b) This section becomes effective June 30, 2005.

LEA SALES TAX REFUND REPORTING

SECTION 7.27.(a) G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity and telecommunications service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) A local school administrative unit.
(2c) A joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
(21) The University of North Carolina Health Care System.
(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 7.27.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly."

SECTION 7.27.(c) In addition to the report required under G.S. 105-164.14(c), as amended by this section, the Secretary of Revenue shall make a report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly within 30 days after this act becomes law of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of G.S. 105-164.14(c) during the 2002-2003, 2003-2004, and 2004-2005 fiscal years.

REVIEW OF STANDARDS FOR MASTERS IN SCHOOL ADMINISTRATION PROGRAMS

SECTION 7.28. The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall review standards for Masters in School Administration programs to ensure that appropriate competencies related to teacher retention, teacher evaluations, teacher support programs, and teacher effectiveness are included and emphasized.

EVALUATION OF SCHOOL PRINCIPALS

SECTION 7.29. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-286.1. Evaluations of principals.**

Local school administrative units shall evaluate all principals and assistant principals at least once each year. Either the superintendent or the superintendent's designee shall conduct the evaluations.

The State Board of Education shall ensure that the standards and criteria for the evaluations include the accountability measures of teacher retention, teacher support, and school climate. The State Board shall revise its evaluation instruments to include these measures. A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board."

PLANNING TIME FOR TEACHERS

SECTION 7.30. The State Board of Education shall report on best practices from North Carolina schools for providing a minimum of five hours per week within the instructional day for planning, collaborating with colleagues and parents, and professional development, especially within elementary school schedules. The State Board shall submit its report to the Education Cabinet and to the Joint Legislative Education Oversight Committee by January 15, 2006.

The State Board shall disseminate this information about best practices to schools and school systems across the State.

LEARN AND EARN HIGH SCHOOLS

SECTION 7.32.(a) Funds are appropriated in this act for the Learn and Earn high school workforce development program. The purpose of the program is to create rigorous and relevant high school options that provide students with the opportunity and assistance to earn an associate degree or two years of college credit by the conclusion of the year after their senior year in high school. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 7.32.(b) These funds shall be used to establish new high schools in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the needs of participating employers.

Funds shall not be allotted until Learn and Earn high schools are certified as operational.

SECTION 7.32.(c) During the first year of its operation, a high school established under G.S. 115C-238.50 shall be allotted a principal regardless of the number of State-paid teachers assigned to the school or the number of students enrolled in the school. The budget flexibility authorized by G.S. 115C-105.25 does not apply to these positions.

SECTION 7.32.(d) The State Board of Education, in consultation with the State Board of Community Colleges and The University of North Carolina Board of Governors, shall conduct an annual evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; (ii) recommended statutory and policy changes; and (iii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each fiscal year.

FLEXIBILITY FOR HIGH SCHOOL INNOVATION

SECTION 7.33.(a) Part 9 of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 9. Cooperative Innovative High School Programs.

"§ **115C-238.50. Purpose.**

(a) The purpose of this Part is to authorize ~~boards of trustees of community colleges and local boards of education to jointly establish~~ local boards of education to jointly establish with one or more boards of trustees cooperative innovative programs in high schools and ~~community~~ colleges or universities that will expand students' opportunities for educational success through high quality instructional programming. These cooperative innovative high school programs shall target:

(1) High school students who are at risk of dropping out of school before attaining a high school diploma; or

(2) High school students who would benefit from accelerated academic instruction.

(b) All the cooperative innovative high school programs established under this Part shall:

(1) Prepare students adequately for future learning in the workforce or in an institution of higher education.
(2) Expand students' educational opportunities within the public school system.
(3) Be centered on the core academic standards represented by the college preparatory or tech prep program of study as defined by the State Board of Education.
(4) Encourage the cooperative or shared use of resources, personnel, and facilities between public schools and ~~community colleges.~~ colleges or universities, or both.
(5) Integrate and emphasize both academic and technical skills necessary for students to be successful in a more demanding and changing workplace.
(6) Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing so that parents and students can make responsible decisions regarding course taking and can track the students' academic progress and success.
(7) Be held accountable for meeting measurable student achievement results.
(8) Encourage the use of different and innovative teaching methods.
(9) Establish joint institutional responsibility and accountability for support of students and their success.
(10) Effectively utilize existing funding sources for high school, ~~community~~ college, university, and vocational programs and actively pursue new funding from other sources.
(11) Develop methods for early identification of potential participating students in the middle grades and through high school.
(12) Reduce the percentage of students needing remedial courses upon their initial entry from high school into a college or university.

(c) Programs developed under this Part that target students who are at risk of dropping out of high school before attaining a high school diploma shall:

(1) Provide these students with the opportunity to graduate from high school possessing the core academic skills needed for postsecondary education and high-skilled employment.
(2) Enable students to complete a technical or academic program in a field that is in high demand and has high wages.
(3) Set and achieve goals that significantly reduce dropout rates and raise high school and ~~community~~ college retention, certification, and degree completion rates.
(4) Enable students who complete these programs to pass employer exams, if applicable.

(d) Cooperative innovative high school programs that offer accelerated learning programs shall:

(1) Provide a flexible, customized program of instruction for students who would benefit from accelerated, higher level coursework or early graduation from high school.
(2) Enable students to obtain a high school diploma in less than four ~~years and~~ years, to begin or complete an associate degree ~~program or~~

program, to master a certificate or vocational ~~program.~~program, or to earn up to two years of college credit.

(3) Offer a college preparatory academic core and in-depth studies in a career or technical field that will lead to advanced programs or employment opportunities in engineering, health sciences, or teaching.

(e) Cooperative innovative high school programs may include the creation of a school within a school, a technical high school, or a high school or technical center located on the campus of a ~~community college.~~college or university.

(f) Students are eligible to attend these programs as early as ninth grade.

"§ **115C-238.50A. Definitions.**

The following definitions apply in this Part:

(1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).

(2) Education partner. – An education partner as provided in G.S. 115C-238.52.

(3) Governing board. – The State Board of Community Colleges, the Board of Governors of The University of North Carolina, or the Board of the North Carolina Independent Colleges and Universities.

(4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina.

"§ **115C-238.51. Application process.**

(a) A local board of education and ~~a~~ at least one local board of trustees ~~of a community college~~ shall jointly apply to establish a cooperative innovative high school program under this Part.

(b) The application shall contain at least the following information:

(1) A description of a program that implements the purposes in G.S. 115C-238.50.

(2) A statement of how the program relates to the Economic Vision Plan adopted for the economic development region in which the program is to be located.

(3) The facilities to be used by the program and the manner in which administrative services of the program are to be provided.

(4) A description of student academic and vocational achievement goals and the method of demonstrating that students have attained the skills and knowledge specified for those goals.

(5) A description of how the program will be operated, including budgeting, curriculum, transportation, and operating procedures.

(6) The process to be followed by the program to ensure parental involvement.

(7) The process by which students will be selected for and admitted to the program.

(8) A description of the funds that will be used and a proposed budget for the program. This description shall identify how the average daily membership (ADM) and full-time equivalent (FTE) students are counted.

(9) The qualifications required for individuals employed in the program.

(10) The number of students to be served.

(11) A description of how the program's effectiveness in meeting the purposes in G.S. 115C-238.50 will be measured.

(c) The application shall be submitted to the State Board of Education and the ~~State Board of Community Colleges~~ applicable governing Boards by November 1 of each year. The ~~State Board of Education and the State Board of Community Colleges~~ Boards shall appoint a joint advisory committee to review the applications and to recommend to the ~~State~~ Boards those programs that meet the requirements of this Part and that achieve the purposes set out in G.S. 115C-238.50.

(d) ~~The State Board of Education and the State Board of Community Colleges shall approve two cooperative innovative high school programs in each of the State's economic development regions.~~ The ~~State~~ Boards may approve programs recommended by the joint advisory committee or may approve other programs that were not recommended. The ~~State~~ Boards shall approve all applications by March 15 of each year. No application shall be approved unless the ~~State Boards~~ State Board of Education and the applicable governing Board find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located.

"§ **115C-238.52. Participation by other education partners.**

(a) Any or all of the following education partners may participate in the development of a cooperative innovative program under this Part that is targeted to high school students who would benefit from accelerated academic instruction:

~~(1) A constituent institution of The University of North Carolina.~~

~~(2) A private college or university located in North Carolina.~~

(3) A private business or organization.

(4) The county board of commissioners in the county in which the program is located.

(b) Any or all of the education partners listed in subsection (a) of this section that participate shall:

(1) Jointly apply with the local board of education and the local board of trustees ~~of the community college~~ to establish a cooperative innovative program under this Part.

(2) Be identified in the application.

(3) Sign the written agreement under G.S. 115C-238.53(b).

"§ **115C-238.53. Program operation.**

(a) A program approved by the State ~~shall be~~ is accountable to the local board of education.

(b) A program approved under this Part shall operate under the terms of a written agreement signed by the local board of education, local board of ~~trustees of the community college,~~ trustees, State Board of Education, and ~~State Board of Community Colleges.~~ applicable governing Board. The agreement shall incorporate the information provided in the application, as modified during the approval process, and any terms and conditions imposed on the program by the State Board of Education and the ~~State Board of Community Colleges.~~ applicable governing Board. The agreement may be for a term of no longer than five school years.

(c) A program may be operated in a facility owned or leased by the local board of education, the local board of ~~trustees of the community college,~~ trustees, or the education partner, if any.

(d) A program approved under this Part shall provide instruction each school year for at least 180 days during nine calendar months, shall comply with laws and policies relating to the education of students with disabilities, and shall comply with Article 27 of this Chapter.

(e) A program approved under this Part may use State, federal, and local funds allocated to the local school administrative unit, to the ~~State Board of Community Colleges,~~ applicable governing Board, and to the ~~community~~ college or university to implement the program. If there is an education partner and if it is a public body, the program may use State, federal, and local funds allocated to that body.

(f) Except as provided in this Part and ~~pursuant to~~ under the terms of the agreement, a program ~~is exempt~~ may be exempted by the applicable governing Board from laws and rules applicable to a local board of education, a local school administrative unit, a community college, a constituent institution, or a local board of ~~trustees of a community college.~~trustees.

"§ **115C-238.54. Funds for programs.**

(a) The Department of Public Instruction shall assign a school code for each program that is approved under this Part. All positions and other State and federal allotments that are generated for this program shall be assigned to that school code. Notwithstanding G.S. 115C-105.25, once funds are assigned to that school code, the local board of education may use these funds for the program and may transfer these funds between funding allotment categories.

(b) The local board of trustees ~~of a community college~~ may allocate State and federal funds for a program that is approved under this Part.

(c) An education partner under G.S. 115C-238.52 that is a public body may allocate State, federal, and local funds for a program that is approved under this Part.

(d) If not an education partner under G.S. 115C-238.52, a county board of commissioners in a county where a program is located may nevertheless appropriate funds to a program approved under this Part.

(e) The local board of education and the local board of trustees ~~of the community college~~ are strongly encouraged to seek funds from sources other than State, federal, and local appropriations. They are strongly encouraged to seek funds the Education Cabinet identifies or obtains under G.S. 116C-4.

"§ **115C-238.55. Evaluation of programs.**

The State Board of Education and the ~~State Board of Community Colleges~~ governing Boards shall evaluate the success of students in programs approved under this Part. Success shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, postgraduation employment in career or study-related fields, and employer satisfaction of employees who participated in and graduated from the programs. Beginning October 15, 2005, and annually thereafter, the Boards shall jointly report to the Joint Legislative Education Oversight Committee on the evaluation of these programs. If, by October 15, 2006, the Boards determine any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the State. This plan shall be included in their report to the Joint Legislative Education Oversight Committee that is due by October 15, 2007."

SECTION 7.33.(b) It is the intent of the General Assembly that three cooperative innovative high school programs are established that emphasize the educational development of high school students in the areas of science and mathematics in a nonresidential setting. One of these programs shall be located in the eastern region of the State, one shall be located in the central region of the State, and one shall be located in the western region of the State. The State Board of Education shall begin planning for the design and implementation of these programs and shall report their plan to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the General Assembly by March 15, 2006.

The plan shall include, but not be limited to, the following aspects of the proposed programs:

(1) Programmatic design including location, curriculum, student access, and calendar.
(2) Projected costs of operation, including instructional, administrative, transportation, capital, and other costs.
(3) Any plans for coordination with institutes of higher education.
(4) Proposed implementation schedule.

MINIMIZE TIME DEVOTED TO STANDARDIZED TESTS

SECTION 7.37. G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. <u>These policies and guidelines shall include the following:</u>

<u>(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;</u>
<u>(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and</u>
<u>(3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.</u>

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

EDUCATION CABINET

SECTION 7.38.(a) G.S. 116C-1(b) reads as rewritten:

"(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the North Carolina Community Colleges System, the Secretary of Health and Human Services, and the President of the North Carolina Independent Colleges and Universities. The Education Cabinet may invite other representatives of education to participate in its deliberations as adjunct members."

SECTION 7.38.(b) The Education Cabinet shall study:

(1) The extent to which school nurses, school social workers, and other instructional support personnel collaborate with each other and with local health, mental health, and social services providers to meet the needs of at-risk children and their families and to support the educational achievement of at-risk children; and

(2) The need for additional training for school nurses, school social workers, and other instructional support personnel on multidisciplinary assessments and on referral and care coordination for at-risk students and their families.

The Education Cabinet shall report the results of its study and its recommendations to the Joint Legislative Education Oversight Committee prior to April 15, 2006.

THE CENTER FOR 21ST CENTURY SKILLS

SECTION 7.39.(a) The State Board of Education shall transfer funds appropriated for the Center for 21st Century Skills to the Office of the Governor. These funds shall be used for the establishment of the Center for 21st Century Skills within the North Carolina Business Committee for Education, Inc. The purpose of the Center shall be to design curriculum, teacher training, and student assessment to support students acquiring the knowledge and skills needed for the emerging workforce of the 21st century.

SECTION 7.39.(b) The North Carolina Business Committee for Education, Inc., and the Center for 21st Century Skills shall coordinate their efforts on high school reform with the North Carolina New Schools Project.

SECTION 7.39.(c) The North Carolina Business Committee for Education, Inc., and the Center for 21st Century Skills shall work with the North Carolina Science, Mathematics and Technology Education Center, the North Carolina School of Science and Mathematics, the North Carolina Board of Science and Technology, and the governing boards of education to research and propose options to create new or expand existing mathematics and science summer enrichment programs across the State and to establish nonresidential high schools focused on mathematics, science, and technology.

TEACHER WORKING CONDITIONS SURVEY

SECTION 7.40.(a) Funds in the amount of two hundred fifteen thousand dollars ($215,000) for the 2005-2006 fiscal year and two hundred ninety thousand dollars ($290,000) for the 2006-2007 fiscal year are appropriated in section 2.1 of this act to administer the Governor's Teacher Working Conditions Survey Initiative. These funds shall be used by the State Board of Education, in collaboration with the North

Carolina Professional Teaching Standards Commission to (i) administer the survey on a biennial basis, (ii) establish an advisory board to oversee implementation of recommendations from the survey, and (iii) support the NC Network in providing customized analysis to incorporate in school improvement plans.

SECTION 7.40.(b) The State Board of Education may supplement these funds with gifts or other private funds donated for this purpose.

PLAN AND FUNDING FOR A VIRTUAL HIGH SCHOOL

SECTION 7.41.(a) The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges. In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate, E-learning for middle schools, junior high schools, and elementary schools. E-learning programs shall support both teachers and students.

SECTION 7.41.(b) As used in this section, "E-learning" is electronic learning that includes a wide set of applications and processes, such as Web-based learning, computer-based learning, virtual classrooms, and digital collaboration. It includes the delivery of content via Internet, intranet/extranet (LAN/WAN), audiotape, videotape, satellite broadcast, interactive television, and CD-ROM.

SECTION 7.41.(c) It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

SECTION 7.41.(d) The State Board of Education shall use funds appropriated for a virtual high school to establish and implement a pilot virtual high school during the 2005-2006 school year and the 2006-2007 school year.

The State Board of Education shall include in the pilot program instruction on personal financial literacy. This instruction shall be designed to equip students with the knowledge and skills they need, before they become self-supporting, to make critical decisions regarding their personal finances. The components of instruction shall include, at a minimum, consumer financial education, personal finance, and personal credit.

SECTION 7.41.(e) If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year.

FEASIBILITY STUDY FOR DEVELOPING REGIONAL EDUCATION NETWORKS

SECTION 7.42. The North Carolina Rural Economic Development Center and the e-NC Authority, in collaboration with interested providers of broadband services, representatives from local school administrative units, The University of North Carolina, private colleges, the State Board of Education, the State Chief Information Officer, and the Community College System shall perform a feasibility study on developing regional education networks that provide and sustain broadband service access to individual students and teachers in schools, community colleges, and universities.

The study shall include (i) an evaluation of existing technology and service applications such as the statewide infrastructure, those operated by the private sector,

the North Carolina Research and Education Network, and networks such as Winston-Net and (ii) an evaluation of newer technology such as wireless broadband access. It shall recommend ways to maximize the use of these existing resources to support growth in broadband service access to the State, including underserved regions.

The North Carolina Rural Economic Development Center and the e-NC Authority shall report the results of the study to the 2006 Regular Session of the 2005 General Assembly.

ASSISTANCE WITH SCHOOL TECHNOLOGY NEEDS

SECTION 7.43.(a) G.S. 115C-102.6A(c) is amended by adding a new subdivision to read:

"(c) Components of the State school technology plan shall include at least the following:

…

(17) A baseline template for:

a. Technology and service application infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and

b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems."

SECTION 7.43.(b) No later than October 31, 2005, the Department of Public Instruction shall hold regional workshops for local school administrative units to provide guidance in developing local school system technology plans that meet the criteria established in the State school technology plan, including the components added under subsection (a) of this section.

SECTION 7.43.(c) G.S. 115C-102.7 is amended by adding the following new subsection to read:

"(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education and the State Chief Information Officer on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans."

SECTION 7.43.(d) The State Board of Education shall determine the total amount of funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and instructional technology as specified in the revised local school system technology plans. This shall include personnel costs for both technical and instructional needs so that a three- to five-year budget plan can be developed for the General Assembly.

SECTION 7.43.(e) The State Board of Education shall also study and identify the types of resources needed to operate schools designed to meet the needs of twenty-first century learners.

The State Board shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly.

SECTION 7.43.(f) In order to provide assistance to local school administrative units with E-rate applications, the Department of Public Instruction shall,

within existing funds, ensure that a minimum of one full-time coordinator is assigned this responsibility. The Department shall notify local school administrative units about the person or office assigned the responsibility of providing assistance with E-rate applications.

The Department shall provide the State Board of Education with an annual report on E-rate, including funding, commitments, and enrollment by local school administrative units.

As used in this section, "E-rate" is the mechanism to provide discount rates to support universal telecommunications services for use by schools and libraries as provided in section 254 of the federal Telecommunications Act of 1996.

SCHOOL EMPLOYEE SALARY STUDY

SECTION 7.47. The Joint Legislative Education Oversight Committee shall research and study the current salary structure for teachers. In the course of the study, the Committee shall:

(1) Develop a method to determine North Carolina's ability to remain competitive in recruiting and retaining highly qualified teachers.

(2) Consider new salary schedule options in lieu of a simple modification of the current salary schedule.

(3) Research and make recommendations on whether or not compressing or expanding a teacher salary schedule would assist in retaining teachers at critical periods when many teachers tend to leave the profession.

(4) Develop and recommend an adequate compensation structure for masters degree and other advanced training.

(5) Consider the placement of appropriate extraordinary increases on the teacher salary schedule for achievement of career status, teacher retention, and other purposes.

(6) Consider how personal leave and other fringe benefits contribute to the compensation packages for employees.

REDIRECT REFUNDABLE SALES TO STATE PUBLIC SCHOOL FUND

SECTION 7.51.(a) G.S. 105-164.14(c)(2b) and (2c) are repealed.

SECTION 7.51.(b) Part 8 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44H. Transfer to State Public School Fund.**

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the State Public School Fund, one-fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year."

SECTION 7.51.(c) Subsection (b) of this section becomes effective July 1, 2006. Notwithstanding the provisions of G.S. 105-164.44H, for the 2006-2007 fiscal year, the amount transferred to the State Public School Fund each quarter shall equal one-fourth of the amount refunded under G.S. 105-164.4(c)(2b) and (2c) during the 2005-2006 fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal

year. The remainder of this section becomes effective July 1, 2005, and applies to sales made on or after that date.

SMALL SPECIALTY HIGH SCHOOLS PILOT PROGRAM

SECTION 7.52.(a) Funds are appropriated in this act for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program is to improve graduation rates and to achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

SECTION 7.52.(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

ENSURE DHHS SCHOOLS RECEIVE FEDERAL FUNDS

SECTION 7.54.(a) It is the intent of the General Assembly that the schools operated by the Department of Health and Human Services participate in federal funding to the same degree as other public schools in the State. The Department of Public Instruction shall ensure that the Department of Health and Human Services schools receive a proportionate share of federal funds for public schools.

SECTION 7.54.(b) G.S. 115C-66 reads as rewritten:

"§ **115C-66. Administrative units classified.**

Each county of the State shall be classified as a county school administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city school administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All local school administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way.

For purposes of eligibility for federal grant funds, the Department of Health and Human Services is hereby classified as a public authority, which is the school administrative agency for the schools that it operates, and shall be considered as such by the State school authorities in the administration and distribution of federal grant funds."

SECTION 7.54.(c) The Department of Health and Human Services shall report on the use, type, and amount of funds received from federal funding and other Department of Public Instruction funding under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by January 31, 2006.

STUDY OF SCHOOL TRANSPORTATION

SECTION 7.57. Of the funds appropriated for Student Transportation for the 2005-2006 fiscal year, the Department of Public Instruction shall use up to one hundred fifty thousand dollars ($150,000) for a study of the current allotment formula for school transportation. The study shall be conducted by an independent consultant.

In the course of the study, the consultant shall consider whether (i) the current formula sufficiently encourages the efficient and effective use of school transportation funds by urban and rural school systems, (ii) the formula is adequately and equitably meeting the needs of school systems, and (iii) the formula is appropriate in light of the Leandro litigation. The consultant shall also propose options for reducing the severe and growing disparity in funding that exists under the formula among local school administrative units.

The consultant shall report the results of its study to the State Board of Education by December 1, 2005. The State Board of Education shall submit a plan for the implementation of the consultant's report to the Joint Legislative Education Oversight Committee by March 15, 2006.

REVIEW OF INTERNAL CONTROLS

SECTION 7.58. G.S. 115C-447 reads as rewritten:

"§ **115C-447. Annual independent audit.**

(a) Each local school administrative unit shall have its accounts and the accounts of individual schools therein audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor who audits the accounts of a local school administrative unit shall also audit the accounts of its individual schools. The auditor shall be selected by and shall report directly to the board of education. The audit contract shall be in writing, shall include all its terms and conditions, and shall be submitted to the Secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The financial statements accompanying the auditor's report shall be prepared in conformity with generally accepted accounting principles. The auditor shall file a copy of the audit report with the Secretary of the Local Government Commission, the State Board of Education, the board of education and the board of county commissioners, and shall submit all bills or claims for audit fees and costs to the Secretary of the Local Government Commission for his approval. It shall be unlawful for any local school administrative unit to pay or permit the payment of such bills or claims without this approval. Each officer, employee and agent of the local school administrative unit having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a board of education or any other public officer, employee or agent shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a Class 1 misdemeanor.

The State Auditor shall have authority to prescribe the manner in which funds disbursed by administrative units by warrants on the State Treasurer shall be audited.

(b) When the State Board of Education finds that incidents of fraud, embezzlement, theft, or management failures in a local school administrative unit make it appropriate to review the internal control procedures of the unit, the State Board of Education shall so notify the unit. If the incidents were discovered by the firm performing the audit under subsection (a) of this section, the board of the local school administrative unit shall submit the audit together with a plan for any corrective actions relative to its internal control procedures to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit. Where the firm preparing the audit under subsection (a) of this section identifies significant problems with internal control procedures the local school administrative unit shall submit the audit together with a plan for any corrective actions relative to its internal control procedures to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit.

If the incidents were not discovered by the firm performing the audit under subsection (a) of this section, the State Board of Education and the Local Government Commission shall employ an audit firm to review the internal control procedures of that local school administrative unit. Upon completion of this review, the audit firm shall report publicly to the State Board of Education, the Local Government Commission, and the board of the local school administrative unit. If the State Board of Education determines that significant changes are needed in the internal control procedures of the local school administrative unit, the local board shall submit a plan of corrective actions to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit. The local school administrative unit shall pay the cost of this audit."

TEACH FINANCIAL LITERACY IN PUBLIC SCHOOLS

SECTION 7.59.(a) G.S. 115C-81 is amended by adding a new subsection to read:

"(i) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide instruction in personal financial literacy for all students during the high school years. The State Board of Education shall determine the components of personal financial literacy that will be covered in the curriculum. The State Board shall also review the high school standard course of study to determine in which course the new personal financial literacy curriculum can be integrated."

SECTION 7.59.(b) When developing the personal financial literacy curriculum, the State Board of Education shall consider the curriculum, materials, and guidelines developed for the pilot programs on financial literacy created by Section 7.35 of S.L. 2003-284. The State Board shall also consider the recommendations from any evaluations of the pilot programs.

SECTION 7.59.(c) The State Board of Education shall have up to two years to develop the personal financial literacy curriculum and integrate the curriculum into the standard course of study. The State Board shall report to the Joint Legislative Education Oversight Committee on the proposed curriculum before implementation.

REPORTS ON THE EXPENDITURE OF SUPPLEMENTAL FUNDS FOR LOW-WEALTH COUNTIES

SECTION 7.60. Local boards of education shall report to the State Board of Education by August 31 of each year on the expenditure of supplemental funds for low-wealth counties and how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

PROVIDE FOR NEW ACCOUNTABILITY FOR THE USE OF FUNDS IN THE AT-RISK AND IMPROVING STUDENT ACCOUNTABILITY ALLOTMENTS

SECTION 7.61.(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education. Priority for use of the funds shall be to (i) provide instructional positions or instructional support positions and/or professional development; (ii) provide intensive in-school and/or after-school remediation; and (iii) purchase diagnostic software and progress monitoring tools.

SECTION 7.61.(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

PART VIII. COMMUNITY COLLEGES

USE OF FUNDS FOR THE COLLEGE INFORMATION SYSTEM PROJECT

SECTION 8.1.(a) Funds appropriated to the Community Colleges System Office for the College Information System Project shall not revert at the end of the 2004-2005 fiscal year but shall remain available until expended.

SECTION 8.1.(b) The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project.

SECTION 8.1.(c) Subsection (a) of this section becomes effective June 30, 2005.

CARRYFORWARD FOR EQUIPMENT

SECTION 8.2.(a) Subject to the approval of the Office of State Budget and Management and cash availability, the North Carolina Community Colleges System Office may carry-forward an amount not to exceed fifteen million dollars ($15,000,000) of the operating funds that were not reverted in fiscal year 2004-2005 to be reallocated to the State Board of Community Colleges' Equipment Reserve Fund. These funds shall be distributed to colleges consistent with G.S. 115D-31.

SECTION 8.2.(b) This section becomes effective June 30, 2005.

SALARIES OF COMMUNITY COLLEGE FACULTY AND PROFESSIONAL STAFF

SECTION 8.3.(a) The minimum salaries for community college faculty shall be based on the following education levels:

(1) Vocational Diploma/Certificate or Less. – This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.
(2) Associate Degree or Equivalent. – This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.
(3) Bachelors Degree.
(4) Masters Degree or Education Specialist.
(5) Doctoral Degree.

SECTION 8.3.(b) For the 2005-2006 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2005-2006
Vocational Diploma/Certificate or Less	$29,932
Associate Degree or Equivalent	$30,373
Bachelors Degree	$32,283
Masters Degree or Education Specialist	$33,978
Doctoral Degree	$36,421

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

SECTION 8.3.(c)

(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average, therefore:
    a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.
    b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.
    c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.
    d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of

the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for New and Expanding Industry Training to increase faculty salaries.

SECTION 8.3.(d) As used in this section:

(1) "Average faculty salary at a community college" means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.

(2) "National average community college faculty salary" means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

SECTION 8.3.(e) The State Board of Community Colleges shall adopt rules to implement the provisions of this section.

SECTION 8.3.(f) The State Board of Community Colleges shall report to the appropriations subcommittees on education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2005, and every year thereafter through December 1, 2009, on the implementation of this section.

SECTION 8.3.(g) Funds appropriated in this act for salary increases shall be used to increase faculty and professional staff salaries by an average of two percent (2%). These increases are in addition to other salary increases provided for in this act and shall be calculated on the average salaries prior to the issuance of the compensation increase. Colleges may provide additional increases from funds available.

The State Board of Community Colleges shall adopt rules to ensure that these funds are used only to move faculty and professional staff to the respective national averages. These funds shall not be transferred by the State Board or used for any other budget purpose by the community colleges.

WORKFORCE DEVELOPMENT PROGRAMS

SECTION 8.4.(a) Article 1 of Chapter 115D of the General Statutes is amended by adding a new G.S. 115D-5.1 to be entitled "Workforce Development Programs"; G.S. 115D-5(d) is recodified as G.S. 115D-5.1(a); G.S. 115D-5(k) is recodified as G.S. 115D-5.1(b); and G.S. 115D-5(i) is recodified as G.S. 115D-5.1(c).

SECTION 8.4.(b) G.S. 115D-5.1, as enacted by subsection (a) of this section, reads as rewritten:

"§ **115D-5.1. Workforce Development Programs.**

(a) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(b) The North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines, which were adopted by the State Board of Community Colleges on April 18, 1997, apply to all funds appropriated for the Program after June 30, 1997. A project approved as an exception under these Guidelines, or these Guidelines as modified by the State Board of Community Colleges, shall be approved for one year only.

(c) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on September 1 of each year on expenditures for the New and Expanding Industry Training Program each fiscal year. The report shall include, for each company or individual that receives funds for the New and Expanding Industry Training Program:

(1) The total amount of funds received by the company or individual;

(2) The amount of funds per trainee received by the company or individual;

(3) The amount of funds received per trainee by the community college training the trainee;

(4) The number of trainees trained by company and by community college; and

(5) The number of years the companies or individuals have been funded.

(d) Funds available to the New and Expanding Industry Training Program shall not revert at the end of a fiscal year but shall remain available until expended.

(e) There is created within the North Carolina Community College System the Customized Industry Training (CIT) Program. The CIT Program shall offer programs and training services as new options for assisting existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the CIT Program, the President of the North Carolina Community College System shall determine that:

(1) The business is making an appreciable capital investment;

(2) The business is deploying new technology; and

(3) The skills of the workers will be enhanced by the assistance.

The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

(1) The total amount of funds received by a company under the CIT Program;
(2) The amount of funds per trainee received by that company;
(3) The amount of funds received per trainee by the community college delivering the training;
(4) The number of trainees trained by the company and community college; and
(5) The number of years that company has been funded.

The State Board shall adopt rules and policies to implement this section."

SECTION 8.4.(c) Notwithstanding any other provision of law, the State Board of Community Colleges may use funds appropriated to it for the New and Expanding Industry Training Program to operate programs under the Customized Industry Training Program.

SECTION 8.4.(d) G.S. 115D-5.1(d), as enacted by this section, becomes effective June 30, 2005.

REPORT ON THE ADEQUACY OF MULTICAMPUS FUNDS

SECTION 8.5. The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

Notwithstanding any other provision of law, funds appropriated to the Community Colleges System Office for multicampus colleges or off-campus centers shall be used only for the administration of the multicampus college or off-campus center for which the funds were allotted. These funds shall not be transferred to any other campus or center, or used for any other purpose.

EDUCATION PROGRAM AUDITING FUNCTION

SECTION 8.6. G.S. 115D-5(m) reads as rewritten:

"(m) ~~The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges.~~ The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor. The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors."

FERRY BOAT OPERATOR TRAINING FEASIBILITY STUDY

SECTION 8.7.(a) The State Board of Community Colleges, in consultation with the Ferry Division of the Department of Transportation, shall study the need for training for ferry boat operators. In conducting the study, the State Board shall consider the following:

(1) Types of training needed and whether it is feasible for the community colleges to provide this training.
(2) Estimated number of students.
(3) Estimated employment opportunities for the students.
(4) Start-up costs for the program and resources for those costs.
(5) Location of the training.

SECTION 8.7.(b) The State Board shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee on its findings and recommendations no later than December 1, 2005.

EXTEND THE SUNSET ON TRAINING AND REEMPLOYMENT CONTRIBUTIONS MADE BY EMPLOYERS

SECTION 8.8.(a) Section 8 of S.L. 1999-321, as amended by Section 30.5(f) of S.L. 2001-424, reads as rewritten:

"Section 8. Section 1 of this act is effective with respect to calendar quarters beginning on or after April 1, 1999. Section 7 of this act becomes effective July 1, 1999. The remainder of this act is effective with respect to calendar quarters beginning on or after January 1, 2000. ~~G.S. 96-6.1, as enacted by Section 2 of this act, is repealed effective with respect to calendar quarters beginning on or after January 1, 2006.~~"

SECTION 8.8.(b) G.S. 96-6.1 is amended by adding a new subsection to read:

"(c) Sunset. – This section is repealed effective with respect to calendar quarters beginning on or after January 1, 2011."

CARRYFORWARD FOR COLLEGES IN ECONOMICALLY DISADVANTAGED COUNTIES

SECTION 8.10.(a) Notwithstanding G.S. 143-18 or any other provision of law, a community college may retain and carry forward its General Fund current operations credit balance remaining at the end of the fiscal year if the county in which the main campus of the community college is located:

(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;
(2) Had an unemployment rate greater than or equal to seven percent (7%) in calendar year 2004; and
(3) Is designated as a Low-Wealth County under Section 7.6 of this act, whose wealth as calculated by the Low-Wealth Formula is eighty percent (80%) or less of the State Average.

SECTION 8.10.(b) Community colleges that qualify for a carryforward under subsection (a) of this section that do not receive maintenance of plant funds pursuant to G.S. 115D-31.2 may use up to fifty thousand dollars ($50,000) from the carryforward to supplement local funding for maintenance of plant. Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended.

SECTION 8.10.(c) Colleges who serve counties that meet the criteria outlined in subsection (a) of this section, but whose main campuses are not located in such counties, may carry forward the percentage of the funds remaining at the end of the fiscal year equal to the percentage of total full-time equivalent students served in those counties that meet the criteria, as determined by the North Carolina Community Colleges System Office.

SECTION 8.10.(d) Allowable carryforwards under this section shall be calculated prior to the calculation of Performance Funding as described in G.S. 115D-31.3.

SECTION 8.10.(e) This section becomes effective June 30, 2005, but expires June 30, 2006.

DEFENSE TECHNOLOGY INNOVATION CENTER

SECTION 8.11. Funds appropriated in this act for North Carolina Electronics and Information Technologies Association's Defense Technology Innovation Center shall be used for the following:

(1) Site selection and acquisition, including the purchase or lease of real property to house the Center; the construction of buildings or other site structures; the improvement or refurbishment of existing structures to provide appropriate laboratory and administrative space; and the improvement of existing infrastructure at the facility, including improvements to utility, telecommunications, and Internet infrastructure.

(2) Equipment acquisition, including acquisition of laboratory equipment and supplies and office furniture, equipment, and supplies.

(3) Employment of staff to support the mission of the Center and to oversee day-to-day operations of the Center.

(4) Implementation of a comprehensive business and marketing plan for the Center.

(5) Development of a tenant screening process and the recruitment of appropriate tenants for the Center.

(6) Administration and operation of the Center and the development of a sustainable business plan for the Center.

COMMUNITY COLLEGE CAPITAL FUNDS

SECTION 8.12. Notwithstanding G.S. 115D-31 or any other provision of law, funds appropriated in this act for community college capital projects do not have to be matched by local funds.

IMPLEMENT PROPRIETARY SCHOOLS LICENSING FEE INCREASE

SECTION 8.14. The State Board of Community Colleges may implement an increase in fees for licensing of proprietary schools in accordance with the following fee schedule adopted by the State Board of Community Colleges on November 18, 2004:

Initial License Fee	$2,500
License Renewal Fee	$1,250 plus $50.00 per program
Program Addition Fee	$200.00
Single Course Addition Fee	$200.00
Relocation/Site Visit Fee	$400.00

Remote Site Initial Fee	$1,000
Remote Site Renewal Fee	$750.00
Site Assessment	$200.00

EXEMPT COMMUNITY COLLEGE MASSAGE AND BODYWORK THERAPY PROGRAMS FROM LICENSURE BY THE NORTH CAROLINA BOARD OF MASSAGE AND BODYWORK THERAPY

SECTION 8.15.(a) G.S. 90-631 reads as rewritten:

"§ **90-631. Massage and bodywork therapy schools.**

(a) The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved ~~schools.~~schools and a list of community college programs operating pursuant to subsection (b) of this section.

(b) A massage and bodywork therapy program operated by a North Carolina community college that is accredited by the Southern Association of Colleges and Schools is exempt from the approval process, licensure process, or both, established by the Board. The college shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.

(c) A massage and bodywork therapy program operated by a degree or diploma granting college or university that offers a degree or diploma in massage therapy and is accredited by any accrediting agency that is recognized by the United States Department of Education and is licensed by the North Carolina Community College System or The University of North Carolina Board of Governors is exempt from the approval process, licensure process, or both, established by the Board. The college or university shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board."

SECTION 8.15.(a) This section becomes effective July 1, 2006.

PART IX. UNIVERSITIES

UNC BUDGET REDUCTION REPORT/ALLOCATIONS

SECTION 9.1. The Chancellor of each constituent institution shall report to the Board of Governors of The University of North Carolina on the reductions made to the General Fund budget codes in order to meet the reduction amounts for that institution. The President of The University of North Carolina shall report to the Board

of Governors of The University of North Carolina on the reductions made to the General Fund budget codes controlled by the Board in order to meet the reduction amounts for those entities. The Board of Governors shall make a summary report to the Office of State Budget and Management and the Fiscal Research Division by December 31, 2005, on all reductions made by these entities and constituent institutions in order to reduce the budgets by the targeted amounts. All reports under this section shall include the positions eliminated and the actions taken on nonpersonnel costs to achieve the reductions.

Except for funds specifically allocated by this act, the Office of State Budget and Management shall certify all University of North Carolina expansion budget items to UNC-GA Institutional Programs for allocation by the Board of Governors as provided by G.S. 116-11(9)a. and G.S. 116-11(9)b. For funds specifically allocated by this act, the Office of State Budget and Management shall certify those University of North Carolina expansion budget items to UNC-GA Institutional Programs for allocation by the Board of Governors as provided by this act.

ENROLLMENT GROWTH FUND/ENCOURAGE PARTNERSHIPS FOR NEW 2 + 2 PROGRAMS

SECTION 9.2.(a) The University of North Carolina Board of Governors' Task Force on Meeting Teacher Supply and Demand called for the President to develop a plan for enrollment growth in the University System's teacher education programs to respond to the State's shortage of teachers. In a presentation to the Joint Legislative Education Oversight Committee and to the Board of Governors, a commitment was made to increase the number of teacher education graduates in 2005-2006 and in 2006-2007. The Office of the President of The University of North Carolina shall obtain plans from each campus as to how they will maintain their current enrollment in the teacher education programs and achieve their growth targets to ensure such increases in those programs occur. Plans may include using enrollment growth funds for targeted admissions, enhanced student support, and advising, recruiting, increases in faculty in necessary instructional areas that lead to certification, and other methods the Office of the President believes will achieve those results. The Office of the President shall report back to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee no later than December 30, 2005, on each campus's plan. No later than March 31, 2006, the Office of the President shall submit a report on progress towards meeting this priority for the 2006-2007 academic year, based on each campus's current students in the education programs, and the students who have been accepted for the 2006-2007 fiscal year who are enrolling in the education programs. The report shall also explain the distribution of enrollment growth funds by specific initiative.

SECTION 9.2.(b) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall strongly encourage the constituent institutions and the community colleges that do not currently have 2 + 2 programs that emphasize teacher education to design and enter into formal partnerships to offer those 2 + 2 programs. The Board of Governors and the Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee by February 1, 2006, regarding the status of existing 2 + 2 programs and any new partnerships established.

UNC-NCCCS JOINT INITIATIVE FOR TEACHER EDUCATION AND RECRUITMENT

SECTION 9.3.(a) Funds appropriated in this act to The University of North Carolina for the UNC-NCCCS Joint Initiative for Teacher Education and Recruitment shall be used to establish eight positions. These individuals shall have an office in and work with staff in the Regional Alternative Licensure Centers of the Department of Public Instruction. Their responsibilities are to assist in increasing the number of certified teachers in the public schools of North Carolina. To accomplish this, their specific tasks are as follows:

(1) Resolve curriculum issues between The University of North Carolina campuses and the community colleges within each region to ensure seamless articulation;

(2) Serve as licensure advisors to prospective teachers and assist with individual reviews for lateral entry candidates;

(3) Offer admissions advice to community college students seeking to transfer to a four-year institution; and

(4) Recruit prospective teachers on community college campuses.

Funds have been included in the appropriation to ensure these staff members can travel routinely among all the University System campuses and community college sites within a region.

SECTION 9.3.(b) The results of this initiative shall be reported annually, and shall include at a minimum, the following performance outcomes by region in which the advisors are working:

(1) Number of community college students articulated and working toward teacher licensure, their "base" community college, and The University of North Carolina institution to which they have moved;

(2) Number of lateral entry teachers worked with by these advisors who are actively pursuing certification, and the number licensed;

(3) Head count of the number of students in the process of receiving courses towards certification, their home county, where/at what institution(s) they are taking the course(s), and whether they are taking the course by regular attendance or via distance education (or the respective percentages if both methods are being employed);

(4) Total full-time equivalencies (FTE's) and student credit hours that the head count in subdivision (3) of this subsection represents;

(5) Articulation issues and curriculum changes effectively made as a result of these advisors; and

(6) Articulation issues that are under discussion but have not been satisfactorily resolved.

SECTION 9.3.(c) These results shall be reported by September 1, 2006, and annually thereafter to the State Board of Education, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight Commission, and the Office of State Budget and Management.

ENROLLMENT GROWTH FUNDING MODEL

SECTION 9.4. The Office of State Budget and Management, jointly with The University of North Carolina and the Fiscal Research Division of the General Assembly, shall conduct a comprehensive review of the enrollment funding model to

review the assumptions contained within each element of the formula, to obtain current benchmark information related to specific elements within the formula, and to examine the impact of alternative elements and assumptions. An alternative to the current model shall be the result of this analysis. This alternative shall be used to prepare a request for enrollment growth funding for the budget to be submitted for the 2007 Session of the General Assembly and shall be shown in comparison to the use of the current formula.

UNC-NCCCS 2+2 E-LEARNING INITIATIVE

SECTION 9.5. Funds appropriated in this act to The University of North Carolina and the North Carolina Community College System for the UNC-NCCCS 2+2 E-Learning Initiative shall be used to fund further development of online courses for 2+2 programs. Based on a mutually agreed upon decision by the State Board of Education Chairman, the President of the North Carolina Community College System, and the President of The University of North Carolina as to the areas of greatest need, funds are available to support joint technology development, systems to track student progress and articulation between a North Carolina community college and a University of North Carolina campus, and to develop technology to support online courses and 2+2 programs.

USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS

SECTION 9.6.(a) There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of sixty-seven million two hundred forty-eight thousand sixteen dollars ($67,248,016) for fiscal year 2005-2006 and the sum of sixty-seven million six hundred thirty-eight thousand sixteen dollars ($67,638,016) for fiscal year 2006-2007; and to the State Board of Community Colleges the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars ($13,981,202) for fiscal year 2005-2006 and the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars ($13,981,202) for fiscal year 2006-2007. These funds shall be allocated by the North Carolina State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7.

The SEAA shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the Scholarship Programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. The SEAA may make recommendations for redistribution of funds to The University of North Carolina and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

SECTION 9.6.(b) There is appropriated from the Escheat Fund to the Board of Governors of The University of North Carolina the sum of seven hundred eighty thousand dollars ($780,000) for the 2005-2006 fiscal year and the sum of one million one hundred seventy thousand dollars ($1,170,000) for the 2006-2007 fiscal year to be allocated to the SEAA for need-based student financial aid to be used in accordance with G.S. 116B-7 and this act. The SEAA shall use these funds only to provide scholarship loans (known as the Millennium Teaching Scholarship Loan Program) to North Carolina high school seniors interested in preparing to teach in the State's public schools who also enroll at any of the Historically Black Colleges and Universities that do not have Teaching Fellows. An allocation of 20 grants of six

thousand five hundred dollars ($6,500) each shall be given to the three universities without any Teaching Fellows for the purposes specified in this subsection.

The SEAA shall administer these funds and shall establish any additional criteria needed to award these scholarship loans, the conditions for forgiving the loans, and the collection of the loan repayments when necessary.

SECTION 9.6.(c) If the interest income generated from the Escheat Fund is insufficient to pay the appropriations made in subsections (a) and (b) of this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum of four hundred million dollars ($400,000,000).

SECTION 9.6.(d) All obligations to students for uses of the funds set out in sections that were made before the date this act becomes law shall be fulfilled as to students who remain eligible under the provisions of the respective programs.

STUDY OF DISTANCE EDUCATION

SECTION 9.7. The Office of State Budget and Management shall conduct a study to identify and analyze the distance education programs at the institutions in the University System. The study shall identify any duplication in course and program offerings, leader courses and programs at campuses in a particular area of study, the cost of developing online courses, and determine which campuses are best suited to offer a particular course or program of study. The findings of the study shall be reported to the Joint Legislative Education Oversight Committee no later than April 30, 2006.

INFORMATION TECHNOLOGY PROCUREMENT

SECTION 9.8. For purposes of purchasing hardware, software licenses, and multiyear maintenance agreements, The University of North Carolina and its constituent institutions may participate in the aggregation of purchasing administered by the Office of Information Technology Services, as defined in G.S. 147-33.72F. The Office of State Budget and Management shall conduct a cost comparison study of hardware, software license, and multiyear maintenance agreement purchases made by The University of North Carolina and its constituent institutions and by the Office of Information Technology Services, to determine if further aggregation is cost-justified. The Study shall also include an analysis of aggregated purchases by the University System and the effect of educational discounts available to the University System. The report of comparative unit costs shall be completed by December 31, 2005.

BOARD OF GOVERNORS' DENTAL SCHOLARSHIPS

SECTION 9.9.(a) The current Board of Governors' Dental Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Dental Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Dental Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers for first-year students, required dental equipment, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to the School of Dentistry at the University of North Carolina at Chapel Hill. The Board may adopt standards, including minimum grade point average and DAT scores, for awarding

these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices dentistry in North Carolina for four years. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice dentistry in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

SECTION 9.9.(b) Any dental scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion.

BOARD OF GOVERNORS' MEDICAL SCHOLARSHIPS

SECTION 9.10.(a) The current Board of Governors' Medical Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Medical Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to either Duke University School of Medicine, Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine. The Board may adopt standards, including minimum grade point average and MCAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

SECTION 9.10.(b) Any medical scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion.

TEACHER SCHOLARSHIPS FUNDS

SECTION 9.11.(a) Article 23 of Chapter 116 of the General Statutes is amended by adding the following new section:

"§ **116-209.38. Future Teachers of North Carolina Scholarship Loan Fund.**

(a) There is established the Future Teachers of North Carolina Scholarship Loan Fund. The purpose of the Fund is to provide a two-year scholarship loan of six thousand five hundred dollars ($6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship loan shall be paid only for the student's junior and senior years. The scholarship loan is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 100 scholarship loans annually.

(b) The Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, shall develop the criteria for awarding the scholarship loans under this section and shall adopt very stringent standards for awarding these scholarship loans to ensure that only the best students receive them. Additional criteria for awarding a scholarship loan under this section shall include all of the following:

(1) The student is one who either: (i) maintained a "B" or better average in college and is enrolled as a junior or senior in a teacher preparation program at any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's Community Colleges System, maintained a "B" or better average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.

(2) The student agrees to become certified in math, science, special education, or English as a Second Language and teach full-time in that subject area in a North Carolina public school for three years within five years after graduation.

(3) Any additional criteria that the Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship loan under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship loan, then the student shall repay the full amount of the scholarship loan provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarship loans,

and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarship loans and to encourage them to apply for the scholarship loans.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 9.11.(b) Of the funds appropriated in this act to the State Education Assistance Authority the sum of six hundred fifty thousand dollars ($650,000) for the 2005-2006 fiscal year and the sum of one million three hundred thousand dollars ($1,300,000) for the 2006-2007 fiscal year shall be used to implement this act.

UNC-ASHEVILLE RETAIN SALE PROCEEDS

SECTION 9.12. Notwithstanding any other provision of law, the University of North Carolina at Asheville may retain the proceeds from the sale of its existing chancellor's residence and appurtenant land. The University of North Carolina at Asheville may use the proceeds from the sale of its existing chancellor's residence and the appurtenant land to construct or otherwise acquire a new chancellor's residence. Proceeds from the sale not used for that purpose within two fiscal years of the sale shall revert to the General Fund.

UNC BOND PROJECT MODIFICATIONS

SECTION 9.13.(a) Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at Elizabeth City State University by changing the scope of "Mitchell-Lewis Residence Hall-Comprehensive Renovation" to be a replacement project instead of a renovation. Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Elizabeth City State University by replacing "Mitchell Lewis Residence Hall-Comprehensive Renovation" with "Mitchell Lewis Residence Hall-Replacement."

SECTION 9.13.(b) Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at North Carolina Central University by the cancellation of "Latham Residence Hall-Comprehensive Renovation". The unused monies from "Latham Residence Hall-Comprehensive Renovation" should be transferred to "Eagleson Residence Hall-Comprehensive Renovation". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under North Carolina Central University by reducing the money allocated to "Latham Residence Hall-Comprehensive Renovation" by reducing that amount by two million three hundred seventy-three thousand four hundred fifty-seven dollars ($2,373,457) to a total of one million thirty-eight thousand one hundred forty-three dollars ($1,038,143) and by increasing the allocation to "Eagleson Residence Hall-Comprehensive Renovation" by two million three hundred seventy-three thousand four hundred fifty-seven dollars ($2,373,457) to create a total allocation of nine million two hundred forty-two thousand nine hundred fifty-seven dollars ($9,242,957).

SECTION 9.13.(c) Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at the University of North Carolina at Wilmington by the cancellation of "King Hall Classroom Building-Comprehensive Renovation" and by transferring the unused funds to the following projects listed under the portion entitled University of North Carolina at Wilmington: "Academic & Classroom Facilities," "General Classroom Bldg.", "Hinton James Hall Classroom Bldg.-Comprehensive Renovation," "Friday Hall Laboratory Bldg.-Comprehensive Renovation," "Kenan Auditorium-Comprehensive Renovation." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under the University of North Carolina at Wilmington by:

(1) Reducing the allocation to "King Hall Classroom Building-Comprehensive Renovation" by three million one hundred sixty-eight thousand six hundred eighty-nine dollars ($3,168,689) to create a total allocation of three hundred fifty-eight thousand seven hundred eleven dollars ($358,711).

(2) Increasing the allocation to "General Classroom Building" by six hundred seventy-nine thousand seven hundred seventy-eight dollars ($679,778) to create a total allocation of thirteen million three hundred twenty-six thousand seven hundred seventy-eight dollars ($13,326,778).

(3) Increasing the allocation to "Academic & Classroom Facilities" by nine hundred ninety-one thousand one hundred twenty-three dollars ($991,123) to create a total allocation of thirty-four million twenty-three thousand two hundred twenty-three dollars ($34,023,223).

(4) Increasing the allocation to "Hinton James Hall Classroom Building-Comprehensive Renovation" by one hundred seventy-six thousand six hundred nine dollars ($176,609) to create a total allocation of two million eight hundred six thousand five hundred sixty-one dollars ($2,806,561).

(5) Increasing the allocation to "Kenan Auditorium-Comprehensive Renovation" by one hundred fifty-one thousand seven hundred forty-nine dollars ($151,749) to create a total allocation of two million seventy-three thousand seven hundred twenty-four dollars ($2,073,724).

(6) Increasing the allocation to "Friday Hall Laboratory Building-Comprehensive Renovation" by one million one hundred sixty-nine thousand four hundred thirty dollars ($1,169,430) to create a total allocation of eight million eight hundred sixty-two thousand eight hundred thirty dollars ($8,862,830).

SECTION 9.13.(d) Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at the University of North Carolina at Pembroke by the cancellation of "West Residence Hall-Comprehensive Renovation" and by transferring the unused funds to a new project, "North and Belk Residence Halls-Fire Safety Improvements and Renovations" and by the cancellation of "Campuswide Infrastructure Improvements" and by transferring those unused funds to a new project, "Biotechnology Teaching Labs and Classroom Building". Section 2(a) of

S.L. 2000-3 is therefore amended in the portion under University of North Carolina at Pembroke by:

(1) Reducing the allocation to "West Residence Hall-Comprehensive Renovation" by eight hundred seventy-nine thousand three hundred dollars ($879,300) to a total allocation of ninety-eight thousand dollars ($98,000).

(2) Reducing the allocation to "Campuswide Infrastructure Improvements" by one million seven hundred thirty thousand three hundred eighty-two dollars ($1,730,382) to a total allocation of two hundred sixty-six thousand two hundred eighteen dollars ($266,218).

(3) Adding a new project entitled "North and Belk Residence Halls-Fire Safety Improvements and Renovations $879,300".

(4) Adding a new project entitled "Biotechnology Teaching Labs and Classroom Building $1,730,382".

SECTION 9.13.(e) Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at Western Carolina University by the cancellation of "Killian Education & Allied Professional Bldg.-Partial Renovation" and "Conversion of Old Student Health Center to Residential & Academic Space" and by transferring the unused funds to "Stillwell Lab Bldg.-Comprehensive Renovation". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Western Carolina University by:

(1) Reducing the allocation to "Killian Education & Allied Professional Bldg.-Partial Renovation" by one million two hundred ninety-seven thousand nine hundred twenty-four dollars ($1,297,924) to a total allocation of two hundred forty-eight thousand three hundred seventy-six dollars ($248,376).

(2) Reducing the allocation to "Conversion of Old Student Health Center to Residential & Academic Space" by one million four hundred ninety-six thousand nine hundred forty-five dollars ($1,496,945) to a total allocation of three hundred ninety thousand one hundred fifty-five dollars ($390,155).

(3) Increasing the allocation to "Stillwell Lab Bldg-Comprehensive Renovation" by two million seven hundred ninety-four thousand eight hundred sixty-nine dollars ($2,794,869) to a total allocation of seventeen million eight hundred fifty-two thousand three hundred sixty-nine dollars ($17,852,369).

SECTION 9.13.(f) Nothing in this section is intended to supersede any other requirement of law or policy for approval of the substituted capital improvement projects.

AMEND NC SCHOOL OF SCIENCE AND MATH TUITION GRANT

SECTION 9.14.(a) G.S. 116-238.1(f) reads as rewritten:

"(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of ~~tuition of~~ attendance at the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of ~~tuition~~ attendance at the constituent institution for which the tuition grant is awarded, then the amount of the tuition grant shall be reduced by an appropriate amount

determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of ~~tuition~~ attendance received by the student, including the tuition grant under this section, shall not exceed the cost of ~~tuition~~ attendance for the constituent institution at which the student is enrolled. The cost of attendance, as used in this subsection, shall be determined by the State Education Assistance Authority for each constituent institution."

SECTION 9.14.(b) This section applies to any eligible student who is enrolled full-time in The University of North Carolina after July 1, 2005.

UNC-CHAPEL HILL CONTINUE TO OPERATE HORACE WILLIAMS AIRPORT

SECTION 9.15. The Legislative Research Commission shall study the continued viability of the Area Health Education Centers (AHEC) program if the Horace Williams Airport is not available and report its findings to the General Assembly no later than the reconvening of the 2005 Regular Session of the General Assembly in 2006. In conducting the study, the Legislative Research Commission should invite physicians and pilots frequently participating in the AHEC program to appear before the Commission.

The University of North Carolina at Chapel Hill shall operate the Horace Williams Airport and continue air transportation support for the AHEC program and the public from that location until 30 days after sine die adjournment of the 2005 Regular Session of the General Assembly.

NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY FUNDS

SECTION 9.16. Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2005-2006 fiscal year the sum of one million eighty-eight thousand nine hundred forty-one dollars ($1,088,941) shall be allocated to North Carolina Agricultural and Technical State University for agricultural and research extension programs. It is the intent of the General Assembly to fully fund these programs for the 2006-2007 fiscal year.

TRANSFER PROSPECTIVE TEACHER SCHOLARSHIP LOAN AND TEACHER ASSISTANT SCHOLARSHIP LOAN TO THE NC STATE EDUCATION ASSISTANCE AUTHORITY

SECTION 9.17.(a) The Scholarship Loan Fund for Prospective Teachers is transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 9.17.(b) G.S. 115C-468 is recodified as G.S. 116-209.33. G.S. 115C-469, 115C-470, and 115C-472.1 are repealed. G.S. 115C-471 is recodified as G.S. 116-209.34.

SECTION 9.17.(c) G.S. 115C-468 recodified by subsection (b) of this section as G.S. 116-209.33 reads as rewritten:

"§ **116-209.33. ~~Establishment of fund.~~Scholarship Loan Fund for Prospective Teachers.**

(a) There is established a revolving fund known as the "Scholarship Loan Fund for Prospective Teachers". The purpose of the Fund is to provide scholarship loans to

qualified individuals who are pursuing college degrees to become teachers. The State Education Assistance Authority shall administer the Fund.

(b) ~~Criteria~~ The State Education Assistance Authority, in consultation with the State Board of Education, shall develop criteria for awarding scholarship loans from ~~the fund shall include measures~~ the Fund. These criteria shall include:

(1) Measures of academic performance including grade point averages, scores on standardized tests, class rank, and recommendations of guidance counselors and principals.

(2) North Carolina residency. – For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.

(3) The geographic areas or subjects of instruction in which the demand for teachers is greatest.

(4) To the extent practical, an equal number of scholarships shall be awarded in each of the State's Congressional Districts.

(5) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including the following:

a. Consideration of the appropriate numbers of minority applicants and applicants from diverse socioeconomic backgrounds to receive scholarships pursuant to this section.

b. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of teaching.

(c) The ~~Superintendent of Public Instruction~~State Education Assistance Authority may earmark each year up to twenty percent (20%) of the funds available for scholarship loans ~~each year~~under this section for awards to applicants ~~who have been employed for at least one year as teacher assistants and who are currently employed as teacher assistants. Preference for these scholarship loans from funds earmarked for teacher assistants shall be given first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The criteria for awarding scholarship loans to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished shall include whether the teacher assistant has been admitted to an approved teacher education program in North Carolina.~~for the Teacher Assistant Scholarship Fund established in G.S. 116-209.35.

~~The Superintendent of Public Instruction may further earmark a portion of these funds each year for two-year awards to applicants who have been employed for at least one year as teacher assistants to attend community colleges to get other skills of use in public schools or to get an early childhood associate degree. The provisions of this Article shall apply to these scholarship loans except that a recipient of one of these scholarship loans may receive credit upon the amount due by reason of the loan as provided in G.S. 115C-471(5) or by working in a nonteaching position in the North Carolina public schools or by working in a licensed child care center in North Carolina.~~"

SECTION 9.17.(d) G.S. 115C-471 recodified by subsection (b) of this section as G.S. 116-209.34 reads as rewritten:

"§ **116-209.34. Fund administered by ~~State Superintendent of Public Instruction; rules and regulations.~~State Education Assistance Authority; rule-making authority.**

(a) ~~The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under rules adopted by the State Board of Education and subject to the following directions and limitations:~~The State Education Assistance Authority shall establish the terms and conditions for the scholarship loans consistent with the following:

(1) ~~Any resident of North Carolina who is interested in preparing to teach in the public schools of the State may apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than two thousand five hundred dollars ($2,500) per academic school year. An applicant who has been employed for at least one year as a teacher assistant and who is currently employed as a teacher assistant may apply for a scholarship loan from funds earmarked for teacher assistants in the amount of not more than one thousand two hundred dollars ($1,200) per academic school year.~~The loan amount shall be not more than four thousand dollars ($4,000) per academic school year for a maximum of four years for applicants who are pursuing a college degree to become a teacher.

(2) All scholarship loans shall be evidenced by notes made payable to the ~~State Board of Education~~ Authority that bear interest at the rate of ten percent (10%) per ~~annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a certificate based upon the entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans, the notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of the scholarship loans; or in the event any such scholarship is terminated under the provisions of subdivision (3) of this section, the notes shall bear interest from the date of termination. A minor recipient who signs a note shall also obtain the endorsement thereon by a parent, if there be a living parent, unless the endorsement is waived by the Superintendent of Public Instruction. The minor recipient shall be obligated upon the note as fully as if the recipient were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon the notes.~~year, beginning September 1 after graduation, or immediately after termination of the scholarship loan, whichever is earlier.

(3) ~~Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until the recipient has qualified for a certificate based upon the entry level degree, but the recipient shall not be so eligible for more than the minimum number of years normally required for qualifying for the certificate. The permanent withdrawal of any recipient from college or failure of the recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction shall immediately forfeit the recipient's right to retain the scholarship and subject the~~

~~scholarship to termination by the State Superintendent of Public Instruction in the Superintendent's discretion.~~ A scholarship loan shall be terminated upon the recipient's withdrawing from school or a finding by the Authority that the recipient fails to meet the standards set by the Authority. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

~~(4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a certificate based upon the entry level degree or, in case of persons already teaching in the public schools, at the beginning of the next school term after the use of the loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered by August 31 of the seventh school year following graduation.~~

~~(5)~~(4) ~~For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of the loan equal to the loan amount for a school year as provided in the note plus credit for the total interest accrued on that amount. Also, the recipient of the loan shall receive credit upon the total amount due by reason of all four years of the loan if the recipient teaches for three consecutive years,~~ The Authority shall forgive a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Authority shall also forgive a four-year loan if, within seven years after graduation, the recipient teaches for three consecutive years, or for three years interrupted only by an approved leave of absence, at a North Carolina public school that is in a low-performing school system or a school system on warning status at the time the recipient accepts employment with the local school administrative unit. ~~In lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof that has not been canceled by the State Board of Education by reason of teaching service rendered.~~For loans of less than four years, the Authority shall forgive one year for each year the recipient teaches, within four years of graduation, at a North Carolina public school or a school operated by the United States government in North Carolina.

~~(6)~~(5) ~~If any recipient of a scholarship loan dies during the period of attendance at a college or university under a scholarship loan or before the scholarship loan is satisfied by payment or teaching service, any balance shall be automatically canceled.~~

~~If any recipient of a scholarship loan fails to fulfill the recipient's obligations under subdivision (4) of this section, other than as provided above, the amount of the loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill the recipient's obligations.~~ The Authority may forgive or reduce any loan

payment if the Authority considers that extenuating circumstances exist that would make teaching or repayment impossible.

~~(7)~~(6) ~~The State Superintendent of Public Instruction shall award scholarship loans with due consideration to factors and circumstances such as aptitude, purposefulness, scholarship, character, financial need, and geographic areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference for scholarship loans, except for the scholarship loans from funds earmarked for teacher assistants, shall be given to high school seniors in the awarding of scholarships. In awarding scholarship loans from funds earmarked for teacher assistants, preference shall be given to applicants who have already earned a baccalaureate degree or who have been formally admitted to an approved teacher education program in North Carolina.~~The Authority shall ensure that all repayments, including the accrued interest, are placed in the Fund.

(b) The State Education Assistance Authority, in consultation with the State Board of Education, shall adopt rules to implement G.S. 116-209.33, 116-209.34, and 116-209.35."

SECTION 9.17.(e) This section becomes effective January 1, 2006, and applies to scholarship loans awarded on or after that date.

UNIVERSITY SYSTEM AND COMMUNITY COLLEGE SYSTEM JOINT STUDY OF HIGHER EDUCATION STRATEGY/AMEND REPORTING REQUIREMENT

SECTION 9.18. Section 6.2 of S.L. 2004-179 reads as rewritten:

"**SECTION 6.2.** These studies shall be designed to provide information and recommendations that will assist the General Assembly in setting priorities for funding to address the strategic higher education needs of the State. The Board of Governors, the State Board, and their consultant shall periodically report their findings to a higher education programming subcommittee of the Joint Legislative Education Oversight Committee. The two boards and their consultant shall report the preliminary results of the study to the General Assembly and to the Joint Legislative Education Oversight Committee by ~~April 15, 2005,~~ June 15, 2005, and shall file a final report and recommendations with the General Assembly and the Joint Legislative Education Oversight Committee no later than ~~December 31, 2005.~~December 31, 2006."

DISTINGUISHED PROFESSORS ENDOWMENT TRUST FUND

SECTION 9.21.(a) G.S. 116-41.15 reads as rewritten:

"§ **116-41.15. Distinguished Professors Endowment Trust Fund; allocation; administration.**

(a) For constituent institutions other than focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

(1) On the basis of one three hundred thirty-four thousand dollar ($334,000) challenge grant for each six hundred sixty-six thousand dollars ($666,000) raised from private sources; or

(2) On the basis of one one hundred sixty-seven thousand dollar ($167,000) challenge grant for each three hundred thirty-three thousand dollars ($333,000) raised from private ~~sources.~~sources; or

(3) On the basis of one challenge grant of up to six hundred sixty-seven thousand dollars ($667,000) for funds raised from private sources in twice the amount of the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision ~~(1) or~~(1), subdivision ~~(2)~~ (2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on ~~a two-to-one basis.~~the basis of two dollars of private funds for every one dollar of State funds.

(b) For focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

(1) On the basis of one five hundred thousand dollar ($500,000) challenge grant for each five hundred thousand dollars ($500,000) raised from private sources; or

(2) On the basis of one two hundred fifty thousand dollar ($250,000) challenge grant for each two hundred fifty thousand dollars ($250,000) raised from private ~~sources.~~sources; or

(3) On the basis of one challenge grant of up to one million dollars ($1,000,000) for funds raised from private sources in the same amount as the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision ~~(1) or~~(1), subdivision ~~(2)~~(2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on ~~a one-to-one basis.~~the basis of one dollar of private funds for every dollar of State funds.

(c) Matching funds shall come from contributions made after July 1, 1985, and pledged for the purposes specified by G.S. 116-41.14. Each participating constituent institution's board of trustees shall establish its own Distinguished Professors Endowment Trust Fund, and shall maintain it pursuant to the provision of G.S. 116-36 to function as a depository for private contributions and for the State matching funds for the challenge grants. The State matching funds shall be transferred to the constituent institution's Endowment Fund upon notification that the institution has received and deposited the appropriate amount required by this section in its own Distinguished Professors Endowment Trust Fund. Only the net income from that account shall be expended in support of the distinguished professorship thereby created."

SECTION 9.21.(b) G.S. 116-41.16 reads as rewritten:

"§ **116-41.16. Distinguished Professors Endowment Trust Fund; contribution commitments.**

(a) For constituent institutions other than focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4, and an initial payment of one hundred eleven thousand dollars ($111,000) to receive a grant described in G.S. 116-41.15(a)(1); or

(2) A commitment to make a donation of at least three hundred thirty-three thousand dollars ($333,000), as prescribed by G.S. 143-31.4, and an initial payment of fifty-five thousand five

hundred dollars ($55,500) to receive a grant described in G.S. 116-41.15(a)~~(2);~~(2); or

(3) A commitment to make a donation in excess of six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(a)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair.

(b) For focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4, and an initial payment of eighty-three thousand three hundred dollars ($83,300) to receive a grant described in G.S. 116-41.5(b)(1); or

(2) A commitment to make a donation of at least two hundred fifty thousand dollars ($250,000), as prescribed by G.S. 143-31.4, and an initial payment of forty-one thousand six hundred dollars ($41,600) to receive a grant described in G.S. 116-41.15(b)~~(2);~~(2); or

(3) A commitment to make a donation in excess of five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(b)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair."

SECTION 9.21.(c) G.S. 116-41.17 reads as rewritten:

"§ **116-41.17. Distinguished Professors Endowment Trust Fund; establishment of chairs.**

When the sum of the challenge grant and matching funds in the ~~Scholars'~~ Distinguished Professors Endowment Trust Fund reaches:

(1) One million dollars ($1,000,000), if the sum of funds described in ~~G.S. 116-41.15(1); or~~ G.S. 116-41.15(a)(1) or G.S. 116-41.15(b)(1); or

(2) Five hundred thousand dollars ($500,000), if the sum of funds described in ~~G.S. 116-41.15(2);~~G.S. 116-41.15(a)(2) or G.S. 116-41.15(b)(2); or

(3) An amount up to two million dollars ($2,000,000), if the sum of funds described in G.S. 116-41.15(a)(3) or G.S. 116-41.15(b)(3);

the board of trustees may recommend to the Board, for its approval, the establishment of an endowed chair or chairs. The Board, in considering whether to approve the

recommendation, shall include in its consideration the programs already existing in The University of North Carolina. If the Board approves the recommendation, the chair or chairs shall be established. The chair or chairs, the property of the constituent institution, may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the board of trustees."

UNC MAY ENCOURAGE THE ESTABLISHMENT OF PRIVATE, NONPROFIT CORPORATIONS TO SUPPORT THE UNIVERSITY SYSTEM AND ASSIGN UNC EMPLOYEES TO ASSIST WITH THOSE CORPORATIONS

SECTION 9.22. Article 1 of Chapter 116 of the General Statutes is amended by adding a new Part to read:

"Part 2B. Private, Nonprofit Corporations.

"**§ 116-30.20. Establishment of private, nonprofit corporations.**

The Board of Governors of The University of North Carolina shall encourage the establishment of private, nonprofit corporations to support the constituent institutions of The University of North Carolina and The University System. The President of The University of North Carolina and the chancellors of the constituent institutions may assign employees to assist with the establishment and operation of a nonprofit corporation and may make available to the corporation office space, equipment, supplies, and other related resources; provided, the sole purpose of the corporation is to support The University of North Carolina or one or more of its constituent institutions.

The board of directors of each such private, nonprofit corporation shall secure and pay for the services of The University System's internal auditors or employ a certified public accountant to conduct an audit of the financial accounts of the corporation. The board of directors shall transmit to the Board of Governors a copy of the annual financial audit report of the private, nonprofit corporation."

ELIMINATE REPORTING REQUIREMENT FOR SCHOOL ADMINISTRATOR TRAINING PROGRAMS

SECTION 9.23. G.S. 116-74.21 reads as rewritten:

"**§ 116-74.21. Establishment of a competitive proposal process for school administrator programs.**

(a) The Board of Governors shall develop and implement a competitive proposal process and criteria for assessing proposals to establish school administrator training programs within the constituent institutions of The University of North Carolina. To facilitate the development of the programs, program criteria, and the proposal process, the Board of Governors may convene a panel of national school administrator program experts and other professional training program experts to assist it in designing the program, the proposal process, and criteria for assessing the proposals.

(b) No more than 12 school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites.

(c) The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of ~~each biennium. The Board of Governors shall report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1, 1994, and annually thereafter.~~the biennium and report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1 annually.

(d) The Board of Governors shall develop a budget for the programs established under subsection (a) of this section that reflects the resources necessary to establish and operate school administrator programs that meet the vision of the report submitted to the 1993 General Assembly by the Educational Leadership Task Force.

~~(e) The Board of Governors shall report annually on the implementation of the act no later than December 1 of each year.~~"

CONTINUE ACADEMIC COMMON MARKET PROGRAM

SECTION 9.24. Part 5 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-43.10. Academic Common Market program.**

(a) The Southern Regional Education Board operates an Academic Common Market program. Under this program, qualified students from participating states may apply to attend programs at public universities in participating states that are not available in their home state's university system. North Carolina's participation for graduate programs provides a cost-effective means of offering educational access for North Carolina residents. North Carolinians are able to attend graduate programs that are not available at The University of North Carolina at reduced rates, and the State avoids the cost associated with the development of new academic programs.

(b) The Board of Governors of The University of North Carolina may continue participation in the Southern Regional Education Board's Academic Common Market at the graduate program level. The Board of Governors shall examine the graduate programs offered in The University of North Carolina System and select for participation only those graduate programs that are likely to be unique or are not commonly available in other Southern Regional Education Board states. Out-of-state tuition shall be waived for students who are residents of other Southern Regional Education Board states and who are participating in the Academic Common Market program. If accepted into The University of North Carolina graduate programs that are part of the Academic Common Market, these students shall pay in-State tuition and shall be treated for all purposes of The University of North Carolina as residents of North Carolina.

(c) Once a student is enrolled in The University of North Carolina System under the Academic Common Market program, the student shall be entitled to pay in-State tuition as long as the student is enrolled in that graduate program. The Board of Governors shall provide a report on the Academic Common Market program to the Joint Legislative Education Oversight Committee by September 2007 and each biennium thereafter."

TUITION WAIVER PROGRAM EXPANSION

SECTION 9.25.(a) G.S. 116-143.1 is amended by adding a new subsection to read:

"(m) Notwithstanding subsection (b) of this section, a person who is a full-time employee of The University of North Carolina, or is the spouse or dependent child of a full-time employee of The University of North Carolina, and who is a legal resident of North Carolina, qualifies as a resident for tuition purposes without having maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes."

SECTION 9.25.(b) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall study the feasibility of a tuition waiver exchange program under which full-time employees of The University of North Carolina would be allowed to take a specified number of courses at a community college without paying tuition, and full-time employees of a community college would be allowed to take a specified number of courses at a constituent institution of The University of North Carolina without paying tuition. The Boards shall report the results of this study to the Joint Legislative Education Oversight Committee by April 1, 2006.

BRODY SCHOOL OF MEDICINE AT ECU/MEDICARE RECEIPTS/FAMILY MEDICINE CENTER

SECTION 9.26.(a) G.S. 116-36.6 reads as rewritten:

"§ **116-36.6. Brody School of Medicine at East Carolina ~~University School of Medicine;~~ University; Medicare receipts.**

The Brody School of Medicine at East Carolina University ~~School of Medicine~~ shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the Brody School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

~~(2) The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.~~

~~(3) The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this subsection. When the amount of these reimbursement funds has been finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects.~~

(2a) Funds that were received pursuant to this section prior to July 1, 2005, and that were transferred to a special fund account on deposit with the

State Treasurer are appropriated to the Brody School of Medicine at East Carolina University and may be expended by the Brody School of Medicine for the family medicine center and for purposes consistent with its stated mission."

SECTION 9.26.(b) Subsections (b) and (c) of Section 87 of Chapter 321 of the 1993 Session Laws are repealed.

SECTION 9.26.(c) Notwithstanding any other provisions of law, the Board of Governors of The University of North Carolina may authorize the design and construction of a new capital project, a family medicine center, on the Health Sciences Campus of the Brody School of Medicine at East Carolina University, that would replace the existing family medicine facility that has reached capacity. The family medicine center is also used as a clinical teaching site for medical students, and the existing facility is functionally outdated for this purpose. The cost of the facility is estimated to be thirty million dollars ($30,000,000). The Board of Governors of The University of North Carolina may authorize the financing of the project with funds available to the Brody School of Medicine at East Carolina University from Medicare reimbursements for education costs, gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

SECTION 9.26.(d) Effective July 1, 2005, the Brody School of Medicine Medical Faculty Practice Plan shall no longer be required to reimburse the General Fund for use of outpatient facilities built with General Fund monies.

SCHOLARSHIP STUDENT

SECTION 9.27.(a) Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-143.6. Full scholarship students attending constituent institutions.**

(a) Notwithstanding any other provision of law, if the Board of Trustees of a constituent institution of The University of North Carolina elects to do so, it may by resolution adopted consider as residents of North Carolina all persons who receive full scholarships to the institution from entities recognized by the institution and attend the institution as undergraduate students. The aforesaid persons shall be considered residents of North Carolina for all purposes by The University of North Carolina.

(b) The following definitions apply in this section:

(1) 'Full scholarship' means a grant that meets the full cost for a student to attend the constituent institution for an academic year.

(2) 'Full cost' means an amount calculated by the constituent institution that is no less than the sum of tuition, required fees, and on-campus room and board.

(c) This section shall not be applied in any manner that violates federal law.

(d) This section shall be administered by the electing constituent institution so as to have no fiscal impact.

(e) In administering this section, the electing constituent institution shall maintain at least the current number of North Carolina residents admitted to that constituent institution."

SECTION 9.27.(b) This section applies to students who accept admission on or after July 1, 2005, to a constituent institution.

ENHANCE NUTRITION IN UNIVERSITY AND COMMUNITY COLLEGE FOOD PROGRAMS

SECTION 9.28.(a) For nutritional purposes, the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall adopt policies governing any food programs operated by the constituent institutions or local community colleges that prohibit: (i) the use of cooking oils in those food programs that contain trans-fatty acids, or (ii) the sale of processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

SECTION 9.28.(b) The policies adopted in compliance with this section shall be implemented internally by August 1, 2006, and shall apply to all contracts entered into or renewed on or after that date.

GRANT-IN-AID/FIRE TRUCK FOR CULLOWHEE VOLUNTEER FIRE DEPT. TO HELP ENSURE ADEQUATE FIRE PROTECTION SERVICES TO WESTERN CAROLINA UNIVERSITY

SECTION 9.29. Of the funds appropriated from the General Fund to the Board of Governors of The University of North Carolina, the sum of seven hundred fifteen thousand dollars ($715,000) for the 2005-2006 fiscal year shall be allocated to Western Carolina University as a grant-in-aid for the Cullowhee Volunteer Fire Department, Inc., to use to purchase a 95-foot platform truck and equipment to ensure adequate fire protection services to Western Carolina University.

WAIVE TUITION FOR A PERSON OF A CERTAIN AGE WHO IS OR WAS A WARD OF THE STATE AND WHO ATTENDS CLASSES AT ANY CONSTITUENT INSTITUTION OF THE UNIVERSITY OF NORTH CAROLINA OR ANY COMMUNITY COLLEGE

SECTION 9.30.(a) G.S. 115B-2(a) is amended by adding a new subdivision to read:

"(5) Any child, if the child (i) is at least 17 years old but not yet 23 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, (iii) is a resident of the State; and (iv) is eligible for services under the Chaffee Education and Training Vouchers Program; but the waiver shall only be to the extent that there is any tuition still payable after receipt of other financial aid received by the student."

SECTION 9.30.(b) G.S. 115B-5 is amended by adding a new subsection to read:

"(c) The officials of the institutions charged with administration of this Chapter may require proof to verify that a person applying to the institution under G.S. 115B-2(5) is eligible for the benefits provided by this Chapter."

PHYSICAL EDUCATION – COACHING SCHOLARSHIP LOAN

SECTION 9.31. Article 23 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-209.36. Physical Education – Coaching Scholarship Loan Fund.**

(a) There is established the Physical Education – Coaching Scholarship Loan Fund. The purpose of the Fund is to provide scholarship loans to students who are pursuing college degrees to become public schoolteachers and coaches or assistant coaches. Coaching Fellows shall be offered a curriculum that advances skills in physical

education and coaching and that instills a strong motivation not only to remain in the coaching profession but to provide leadership in the schools where they coach. The State Education Assistance Authority shall administer the Fund. The Fund shall provide 25 scholarship loans per year.

(b) Criteria for awarding the scholarship loans shall be developed by the State Education Assistance Authority in consultation with the Board of Governors of The University of North Carolina and shall include all of the following:

(1) An applicant shall be enrolled in an accredited bachelors degree program in an institution of higher education in North Carolina.

(2) All students shall enter into a legal agreement and promissory note with the Authority to accept employment as a coach or coaching assistant in an elementary or secondary school in North Carolina in exchange for receiving any funds, which agreement shall include stipulation that the student agrees to accept employment in rural or other need-based counties.

(3) An applicant shall be a resident of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.

(4) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including all of the following:

a. Consideration of applicants from diverse backgrounds to receive scholarships pursuant to this section.

b. Consideration of the academic qualifications of the individuals applying to receive funds.

c. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of coaching.

(c) The State Education Assistance Authority shall: (i) prepare a clear written explanation of the Physical Education – Coaching Scholarship Loan Fund and the information regarding the availability and criteria for awarding the scholarships, and (ii) provide that information to the appropriate counselors in each local school system and shall charge those counselors to inform students about the scholarships and to encourage them to apply for the scholarships.

(d) The State Education Assistance Authority shall administer the Fund and shall ensure that the loan amount is limited to four thousand dollars ($4,000) per recipient per year.

(e) The Authority shall ensure that the following loan cancellations and repayment schedules apply to all funds distributed pursuant to this section:

(1) The individual who graduates with a bachelors degree and who works as a school coach or coaching assistant in a rural or other need-based area of North Carolina shall have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment shall cancel one academic year's loan.

(2) The individual who graduates with a bachelors degree and who works as a school coach or assistant coach in a rural or other need-based area of North Carolina for the equivalent of the total number of academic years funds were received shall have the entire loan cancelled.

(3) The individual who graduates with a bachelors degree and who does not work as a school coach or assistant coach in a rural or other need-based area of North Carolina for any or all of the equivalent of the number of years funds were received shall repay the loan to the Authority according to a schedule prescribed in the promissory note, plus ten percent (10%) annual interest.

(4) The individual who does not graduate with a bachelors degree shall repay the loan according to a schedule prescribed by the Authority, not to exceed fifteen percent (15%) annual interest. In establishing a schedule and interest rate, the Authority shall take into consideration the reasons the individual did not graduate with a bachelors degree.

The Authority shall ensure that all repayments, including accrued interest, shall be placed in the Fund.

The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(f) The State Education Assistance Authority, in consultation with the Board of Governors of The University of North Carolina, shall adopt rules to implement this section.

(g) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarship loans awarded from the Fund."

NURSING SCHOLARS PROGRAM

SECTION 9.33. G.S. 90-171.61 is amended by adding a new subsection to read:

"(b1) If a recipient is awarded a scholarship loan under this program and is enrolled, or accepted for enrollment, in a baccalaureate nursing program, but is unable to pursue the course of study in nursing for a semester due to limited faculty resources at the institution for that semester, then the recipient shall continue to receive the scholarship loan for that semester and shall not be required to forfeit or repay the scholarship loan for that semester provided that the recipient remains otherwise eligible for the program. This waiver shall be valid for only one semester of study and may extend a recipient's eligibility for funding under the program by no more than one semester."

PROFESSIONAL DEVELOPMENT PROGRAMS FOR PUBLIC SCHOOL EMPLOYEES

SECTION 9.34.(a) G.S. 115C-12(26) reads as rewritten:

"§ **115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

…

(26) Duty to Monitor and Make Recommendations Regarding Professional Development Programs. – The State Board of ~~Education shall identify State and local needs for professional development for professional public school employees based upon the State's educational priorities~~

~~for improving student achievement. The State Board also shall recommend strategies for addressing these needs. The strategies must be research-based, proven in practice, and designed for data-driven evaluation. The State Board shall report its findings and recommendations to the Joint Legislative Education Oversight Committee, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Board of Governors of The University of North Carolina prior to January 15, 2002, and shall review, revise, and resubmit those findings and recommendations annually thereafter. The State Board shall evaluate the reports submitted by the Board of Governors under G.S. 116-11(12a) to determine whether the programs for professional development provided by the Center for School Leadership Development address the State and local needs identified by the State Board and whether the programs are using the strategies recommended by the State Board. Prior to January 15th of each year, the State Board shall report the results of its analysis to the Board of Governors and to the Joint Legislative Education Oversight Committee.~~ Education, in collaboration with the Board of Governors of The University of North Carolina, shall identify and make recommendations regarding meaningful professional development programs for professional public school employees. The programs shall be aligned with State education goals and directed toward improving student academic achievement. The State Board shall annually evaluate and, after consultation with the Board of Governors, make recommendations regarding professional development programs based upon reports submitted by the Board of Governors under G.S. 116-11(12a)."

SECTION 9.34.(b) G.S. 116-11(12a) reads as rewritten:

"§ **116-11. Powers and duties generally.**

The powers and duties of the Board of Governors shall include the following:

…

(12a) ~~Notwithstanding any other law, the~~The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees ~~in accordance with~~ based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. ~~The Board of Governors shall submit to the State Board of Education an annual written report that uses data to assess and evaluate the effectiveness of the programs for professional development offered by the Center for School Leadership Development. The report shall clearly document how the programs address the State needs identified by the State Board of Education and whether the programs are utilizing the strategies recommended by the State Board. The Board of Governors also shall submit this report to the Joint Legislative Education Oversight Committee, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives prior to September 15th of each year.~~The Board of

Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors."

STUDY IN-STATE TEACHER TUITION BENEFIT

SECTION 9.35. The Joint Legislative Education Oversight Committee shall study the current law regarding the in-State tuition rate available to certain teachers for courses relevant to teacher certification or professional development as a teacher. In its study, the Committee shall consider the difficulty some teachers have in establishing North Carolina as their domicile, the fact that school systems on the borders of the State often recruit nonresidents who commute from their homes to teach in the North Carolina public school system and so are unable to establish this State as their domicile and any other relevant issues. The Committee shall make an interim report regarding its findings and recommendations to the 2005 General Assembly by May 30, 2007, and shall make a final report of its findings and recommendations to the 2007 General Assembly.

CENTER FOR CRAFT, CREATIVITY, AND DESIGN

SECTION 9.37. Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the Center for Craft, Creativity, and Design at the University of North Carolina at Asheville, the sum of two hundred thousand dollars ($200,000) in recurring funds for the 2005-2006 fiscal year shall be held in reserve for the Center for Craft, Creativity, and Design at the University of North Carolina at Asheville. The funds shall be disbursed to the University of North Carolina at Asheville when the Center receives the interest earnings from an endowment for graduate scholarships at the Center.

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

INFORMATION TECHNOLOGY

SECTION 10.1.(a) To support its information technology initiatives, the Department of Health and Human Services shall develop the following:

(1) A detailed business plan.

(2) An information technology plan directly tied to business requirements.

(3) An IT architecture.

The Department of Health and Human Services shall ensure that the planning documents extend three to five years and include detailed shortfall analyses and associated cost assessments. The Department of Health and Human Services shall forward the documents to the Office of Information Technology Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2005. The Office of Information Technology Services shall review the documents and report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 31, 2006.

SECTION 10.1.(b) The Department of Health and Human Services shall develop a project plan for each of its information technology projects. These plans shall include the following:

(1) A detailed description of the project.
(2) A description of how the project improves Department operations and service to customers.
(3) The projected cost of the project by year and phase.
(4) Deliverables required to implement each phase of the system.
(5) The date that each deliverable is to be implemented.
(6) The cost of implementing each deliverable.
(7) What capabilities each deliverable adds to the project.

SECTION 10.1.(c) The Department of Health and Human Services shall provide the plans to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005, with subsequent updates provided quarterly. The Department of Health and Human Services shall notify the Division of Fiscal Research within 10 days when costs, completion dates, or system capabilities change and provide a report detailing the impact of the change.

SECTION 10.1.(d) The Department of Health and Human Services shall not spend more than the amounts appropriated by the General Assembly for information technology projects and may not allocate funds appropriated for one information technology project to any other information technology project.

SECTION 10.1.(e) The Department of Health and Human Services shall use funds appropriated for the 2005-2006 and 2006-2007 fiscal years for the North Carolina Families Accessing Services through Technology (NC FAST) program only for program-specific development, deliverables, and maintenance costs associated with the NC FAST program.

OFFICE OF POLICY AND PLANNING

SECTION 10.2. Article 3 of Chapter 143B is amended by adding the following new Part to read:

"Part 34. Office of Policy and Planning.

"**§ 143B-216.70. Office of Policy and Planning.**

(a) To promote coordinated policy development and strategic planning for the State's health and human services systems, the Secretary of Health and Human Services shall establish an Office of Policy and Planning from existing resources across the Department. The Director of the Office of Policy and Planning shall report directly to the Secretary and shall have the following responsibilities:

(1) Coordinate the development of departmental policies, plans, and rules, in consultation with the Divisions of the Department.
(2) Development of a departmental process for the development and implementation of new policies, plans, and rules.
(3) Development of a departmental process for the review of existing policies, plans, and rules to ensure that departmental policies, plans, and rules are relevant.
(4) Coordination and review of all departmental policies before dissemination to ensure that all policies are well-coordinated within and across all programs.
(5) Implementation of ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department.

(6) Review, disseminate, monitor, and evaluate best practice models.

(b) Under the direction of the Secretary of Health and Human Services, the Director of the Office of Policy and Planning shall have the authority to direct Divisions, offices, and programs within the Department to conduct periodic reviews of policies, plans, and rules and shall advise the Secretary when it is determined to be appropriate or necessary to modify, amend, and repeal departmental policies, plans, and rules. All policy and management positions within the Office of Policy and Planning are exempt positions as that term is defined in G.S. 126-5."

SENIOR PRESCRIPTION DRUG ACCESS PROGRAM FUNDING

SECTION 10.3. The Director of the Budget shall use available funds up to one million five hundred thousand dollars ($1,500,000) in the 2005-2006 fiscal year to fully fund the Senior Prescription Drug Access Program through December 31, 2005, if there is a shortfall of funds from the Health and Wellness Trust Fund, and the funds are not sufficient to provide drug acquisition services under the Program through December 31, 2005.

SENIOR CARES PROGRAM ADMINISTRATION/AUTOMATIC ENROLLMENT MEDICARE PRESCRIPTION DRUG PROGRAM

SECTION 10.4.(a) The Department of Health and Human Services may administer the "Senior Cares" prescription drug access program approved by the Health and Wellness Trust Fund Commission and funded from the Health and Wellness Trust Fund. The Department may use funds appropriated in this act to administer the Senior Cares prescription drug assistance program.

SECTION 10.4.(b) In order to ensure prescription drug coverage under the Medicare Part D Prescription Drug Program for seniors who are eligible but not automatically enrolled in the Medicare program by the federal government, the Department of Health and Human Services may enroll senior citizens into a federally approved Medicare Prescription Drug Plan, as follows:

(1) Current and future participants in the Senior Cares prescription drug assistance program whose income is not more than one hundred thirty-five percent (135%) of the federal poverty level are eligible for automatic enrollment.

(2) Prior to automatic enrollment, the Department shall give the individual the opportunity to decline automatic enrollment.

No State funds shall be used for the enrollment of senior citizens into the Medicare Prescription Drug Plan.

SECTION 10.4.(c) The Senior Cares prescription drug access program expires December 31, 2005. The Department of Health and Human Services may conduct administrative activities after December 31, 2005, related to closing the program, including paying claims incurred before December 31, 2005, but received after that date.

NONMEDICAID REIMBURSEMENT CHANGES

SECTION 10.5. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	Rehabilitation Except DSB Over 55 Grant	Other
1	$4,860	$8,364	$4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,821	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. The eligibility level for adults 55 years of age or older who qualify for services through the Division of Services for the Blind, Independent Living Rehabilitation Program, shall be two hundred percent (200%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. The eligibility level for adults in the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred fifty percent (150%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

Income (% of poverty)	State Participation	Client Participation
0-150%	100%	0%
151-200%	75%	25%

201-250%	50%	50%
251-300%	25%	75%
300% and over	0%	100%

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

PHYSICIAN SERVICES

SECTION 10.6. With the approval of the Office of State Budget and Management, the Department of Health and Human Services may use funds appropriated in this act for across-the-board salary increases and performance pay to offset similar increases in the costs of contracting with private and independent universities for the provision of physician services to clients in facilities operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This offsetting shall be done in the same manner as is currently done with the constituent institutions of The University of North Carolina.

LIABILITY INSURANCE

SECTION 10.7.(a) The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars ($1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

SECTION 10.7.(b) The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

SECTION 10.7.(c) The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

DHHS PAYROLL DEDUCTION FOR CHILD CARE SERVICES

SECTION 10.8. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-139.6B. Department of Health and Human Services; authority to deduct payroll for child care services.**

Notwithstanding G.S. 143-3.3 and pursuant to rules adopted by the State Controller, an employee of the Department of Health and Human Services may, in writing, authorize the Department to periodically deduct from the employee's salary or wages paid for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department."

COMMUNITY HEALTH CENTERS FUNDS

SECTION 10.9.(a) Of the funds appropriated in this act for Community Health Grants, the sum of two million dollars ($2,000,000) in recurring funds for the 2005-2006 fiscal year, and the sum of two million dollars ($2,000,000) in recurring funds for the 2006-2007 fiscal year shall be used for federally qualified health centers, for those health centers that meet the criteria for federally qualified health centers, and for State-designated rural health centers and public health departments and other clinics to:

(1) Increase access to preventative and primary care services by uninsured or medically indigent patients in existing or new health center locations;

(2) Establish community health center services in counties where no such services exist;

(3) Create new services or augment existing services provided to uninsured or medically indigent patients, including primary care and preventative medical services, dental services, pharmacy, and behavioral health; and

(4) Increase capacity necessary to serve the uninsured by enhancing or replacing facilities, equipment, or technologies.

Grant funds may not be used to enhance or increase compensation or other benefits of personnel, administrators, directors, consultants, or any other parties. Grant funds may not be used to supplant federal funds traditionally received by federally qualified community health centers and may not be used to finance or satisfy any existing debt. The Department of Health and Human Services shall distribute funds on the basis of the availability of other funds for the agency, and also on the basis of incidence of poverty or percentage of indigent clients served.

SECTION 10.9.(b) The Office shall work with the North Carolina Community Health Center Association (hereafter "NCCHCA") and the North Carolina Public Health Association (hereafter "NCPHA") to establish an advisory committee to develop an objective and equitable process for awarding grant funds. The Office shall also develop auditing and accountability procedures. Not more than one percent (1%) of the funds appropriated in this section may be used to reimburse the Office for administering the grant program in collaboration with the NCCHCA and the NCPHA.

SECTION 10.9.(c) Recipients of grant funds shall provide to the Office annually a written report detailing the number of additional uninsured and medically indigent patients that are cared for, the types of services that were provided, and any other information requested by the Office as necessary for evaluating the success of the grant program.

SECTION 10.9.(d) The Office shall work with the NCCHCA and NCPHA to study and present recommendations for continuing funds to support the expansion of community health centers, State-designated rural health centers, and public

health departments to serve more of the State's uninsured and indigent population. The Office shall submit the report to the 2006 Regular Session of the 2005 General Assembly upon its convening.

PROVIDER REIMBURSEMENT RATES

SECTION 10.10. Except for rate increases funded in this act, the Department of Health and Human Services shall maintain reimbursement rates paid to service providers at fiscal year 2004-2005 levels during the 2005-2006 and 2006-2007 fiscal years. Exceptions made by the Department shall be made on a case-by-case basis and must be approved by the Office of the Secretary. Changes in rate structures that result in lower payments to the providers are exempted from this requirement. As used in this section, "service providers" includes subcontractors, such as counties, area agencies on aging, departments of social services, departments of public health, child developmental services agencies, and local management entities.

PROVIDER TRACKING DATABASE SYSTEM

SECTION 10.10A. The Department of Health and Human Services shall develop a proposal for the planning, development, and implementation of a provider tracking database system ("System"). The purpose of the System is to monitor the performance and provide effective oversight of all provider facilities serving vulnerable populations and shall generate demographic data regarding the facilities for use by monitors, investigators, and the public. The Department shall submit the proposal and other required documentation to the Office of State Budget and Management (OSBM) and the Office of Information Technology Services (ITS) for their review and approval. If approved by the OSBM and ITS, the Department shall submit the approved proposal and documentation not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division for review in determining whether and to what extent funds should be appropriated for System implementation.

FUNDS FOR JIM "CATFISH" HUNTER CHAPTER OF THE ALS ASSOCIATION

SECTION 10.10B. Funds appropriated in this act for the Jim "Catfish" Hunter Chapter of the ALS Association shall be expended only for services provided within North Carolina.

MEDICAID

SECTION 10.11.(a) Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

(1) Hospital inpatient. – Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Health and Human Services.

(2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

(3) Nursing facilities. – Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Health and Human Services. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.

(4) Intermediate care facilities for the mentally retarded. – As prescribed in the State Plan as established by the Department of Health and Human Services.

(5) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". The Department shall report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House

of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on authorizations, limitations, and reviews established under this subparagraph, including limitations on monthly brand-name and generic prescriptions as well as restrictions on the total number of medications. The Department shall submit the report not later than May 1, 2006.

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.

(6) Physicians, chiropractors, podiatrists, optometrists, dentists, certified nurse midwife services, nurse practitioners. – Fee schedules as developed by the Department of Health and Human Services. Payments for dental services are subject to the provisions of subsection (g) of this section.

(7) Community Alternative Program, EPSDT screens. – Payment to be made in accordance with the rate schedule developed by the Department of Health and Human Services.

(8) Home health and related services, private duty nursing, clinic services, prepaid health plans, durable medical equipment. – Payment to be

made according to reimbursement plans developed by the Department of Health and Human Services.

(9) Medicare Buy-In. – Social Security Administration premium.

(10) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

(11) Hearing aids. – Wholesale cost plus a dispensing fee to the provider.

(12) Rural health clinic services. – Provider-based, reasonable cost; nonprovider-based, single-cost reimbursement rate per clinic visit.

(13) Family planning. – Negotiated rate for local health departments. For other providers, see specific services, for instance, hospitals, physicians.

(14) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.

(15) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

(16) Ambulatory surgical centers. – Payment as prescribed in the reimbursement plan established by the Department of Health and Human Services.

(17) Medicare crossover claims. – By not later than October 1, 2005, the Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.

(18) Physical therapy and speech therapy. – Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy (including occupational therapy) and speech therapy services are subject to prior approval and utilization review.

(19) Personal care services. – Payment in accordance with the State Plan approved by the Department of Health and Human Services.

(20) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

(21) Hospice. – Services may be provided in accordance with the State Plan developed by the Department of Health and Human Services.

(22) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:

a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services

not to exceed the upper limits established in federal regulations, and

b. For children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and
2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, Medicaid-eligible adults may be self-referred.

d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addiction specialists, and certified clinical supervisors until all of the following conditions have been met:

1. The fiscal impact of payments to these qualified providers has been projected;
2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and
3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance.

(23) Medically necessary prosthetics or orthotics. – Reimbursement in accordance with the State Plan approved by the Department of Health and Human Services, except that in order to be eligible for reimbursement, providers must be Board certified not later than July 1, 2005. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

(24) Health insurance premiums. – Payments to be made in accordance with the State Plan adopted by the Department of Health and Human Services consistent with federal regulations.

(25) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this subdivision are limited to those prescribed in the State Plan as established by the Department of Health and Human Services.

(26) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Payment is limited to Medicaid-enrolled providers that purchase a performance bond in an amount not to exceed one hundred thousand dollars ($100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may waive or limit the requirements of this paragraph for one or more classes of Medicaid-enrolled providers based on the provider's dollar amount of monthly billings to Medicaid or the length of time the provider has been licensed in this State to provide services. In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, emergency rooms, and mental health services subject to independent utilization review are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Health and Human Services where the life of the patient would be threatened without such additional care.

SECTION 10.11.(b) Allocation of Nonfederal Cost of Medicaid. – The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

SECTION 10.11.(c) Co-Payment for Medicaid Services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation and required by this subsection in order to achieve reductions in the budget in fiscal years 2005-2006 and 2006-2007.

SECTION 10.11.(d) Medicaid and Work First Family Assistance, Income Eligibility Standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

	Categorically Needy	Medically Needy	
	WFFA*		
Family Size	Standard of Need	Families and Children Income Level	AA, AB, AD*
1	$4,344	$2,172	$2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

SECTION 10.11.(e) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to all elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines, as revised each April 1.

SECTION 10.11.(f) ICF and ICF/MR Work Incentive Allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	Monthly Incentive Allowance
$1.00 to $100.99	Up to $50.00
$101.00 to $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00.

SECTION 10.11.(g) Dental Coverage Limits. – Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

SECTION 10.11.(h) Exceptions to Service Limitations, Eligibility Requirements, and Payments. – Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient. The Department of Health and Human Services may proceed with planning and development work on the Program of All-Inclusive Care for the Elderly.

SECTION 10.11.(i) Volume Purchase Plans and Single Source Procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

SECTION 10.11.(j) Cost-Containment Programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost-containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

SECTION 10.11.(k) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

SECTION 10.11.(l) The Department of Health and Human Services shall provide Medicaid to 19-, 20-, and 21-year-olds in accordance with federal rules and regulations.

SECTION 10.11.(m) The Department of Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:

(1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(2) Effective until January 1, 2006, infants under the age of one with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(3) Effective until January 1, 2006, children aged one through five with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(4) Children aged six through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(5) The Department of Health and Human Services shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

SECTION 10.11.(n) Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

SECTION 10.11.(o) The Division of Medical Assistance, Department of Health and Human Services, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

SECTION 10.11.(p) If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and

acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed the currently allocated funds for the new contract for the fiscal agent for the Medicaid Management Information System.

SECTION 10.11.(q) The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

SECTION 10.11.(r) The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services or the Joint Legislative Health Care Oversight Committee on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval.

SECTION 10.11.(s) The Department of Health and Human Services shall provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty level. Of the funds appropriated in this act to the Division of Medical Assistance, the sum of seven hundred fifty thousand dollars ($750,000) for the 2005-2006 fiscal year shall be used to provide the State-match for the family planning demonstration waiver approved by the federal government.

SECTION 10.11.(t) For the purposes of determining eligibility for Medical Assistance, the Department of Health and Human Services may apply federal transfer of assets policies, as described in Title XIX, section 1917(c) of the Social Security Act, including the attachment of liens, to (i) life estates purchased by or on behalf of the recipient, other than life estates excluded from countable resources under this section, and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing" under Title XIX, section 1902(r)(2) of the Social Security Act. The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse as defined in Title XIX, section 1917(c) of the Social Security Act. The Department shall exclude from countable resources any life estate in real property that is in the recipient's home, is measured by the recipient's life, and is the result of the transfer of a remainder interest.

Federal transfer of assets policies applied to "income producing" real property under Title XIX, section 1902(r)(2) of the Social Security Act shall become effective not earlier than October 1, 2001. Federal transfer of assets policies and attachment of liens applied to real property excluded as tenancy-in-common, or as nonhomesite property made "income producing" in accordance with this subsection shall become effective not earlier than November 1, 2002. Federal transfer of assets policies applied

to life estates in accordance with this subsection shall become effective not earlier than October 1, 2005.

SECTION 10.11.(u) When implementing the Supplemental Security Income (SSI) method for considering equity value of income producing property, the Department shall, to the maximum extent possible, employ procedures to mitigate the hardship to Medicaid enrollees occurring from application of the Supplemental Security Income (SSI) method.

SECTION 10.11.(v) Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars ($3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars ($3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars ($3,000,000).

SECTION 10.11.(w) The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.

(2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:
   a. Publish the proposed new or amended medical coverage policy on the Department's Web site;
   b. Notify all Medicaid providers of the proposed, new, or amended policy; and
   c. Upon request, provide persons copies of the proposed medical coverage policy.

(3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.

(4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:
   a. Notify all Medicaid providers of the proposed policy;
   b. Upon request, provide persons notice of amendments to the proposed policy; and

c. Accept additional oral or written comments during this 15-day period.

SECTION 10.11.(x) For the purposes of investigating and reducing client fraud and abuse, the Department of Health and Human Services, Division of Medical Assistance, shall, unless prohibited by federal law, include in the Medicaid enrollment process the requirement that the applicant for Medicaid consent to or authorize in writing the release of the applicant's medical records for the three years immediately preceding the application for Medicaid benefits. The Department shall obtain and use information from the applicant's medical records in a manner and form that complies with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, as amended, and that protects the privacy of the information as required by other applicable federal or State law. In addition to fraud and abuse detection, the Department may require the applicant's consent for other purposes permitted by HIPAA and required or authorized by other applicable federal or State law.

SECTION 10.11.(y) The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall provide an opportunity for interested advocacy organizations to comment on restrictions imposed by the Department of Health and Human Services, Division of Medical Assistance, on the medications prescribed for Medicaid recipients, as authorized under subsection (a)(5) of this section. The Committee may report its findings or recommendations based on comments received to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before April 30, 2006.

DISPOSITION OF DISPROPORTIONATE SHARE RECEIPTS

SECTION 10.12.(a) Disproportionate share receipts reserved at the end of the 2005-2006 and 2006-2007 fiscal years shall be deposited with the Department of State Treasurer as nontax revenue for each of those fiscal years.

SECTION 10.12.(b) For each year of the 2005-2007 fiscal biennium, as it receives funds associated with Disproportionate Share Payments from State hospitals, the Department of Health and Human Services, Division of Medical Assistance, shall deposit up to one hundred million dollars ($100,000,000) of these Disproportionate Share Payments to the Department of State Treasurer for deposit as nontax revenue. Any Disproportionate Share Payments collected in excess of one hundred million dollars ($100,000,000) shall be reserved by the State Treasurer for future appropriations.

COUNTY MEDICAID COST SHARE

SECTION 10.13.(a) Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

SECTION 10.13.(b) Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

MEDICAID COST CONTAINMENT ACTIVITIES

SECTION 10.14. The Department of Health and Human Services may use not more than three million dollars ($3,000,000) in the 2005-2006 fiscal year and not more than three million dollars ($3,000,000) in the 2006-2007 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services or hiring additional staff. Medicaid cost-containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic stripped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost-containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost-containment activity and documentation of the amount of savings expected to be realized from the cost-containment activity. The Department shall provide a copy of proposals for expenditures under this section to the Fiscal Research Division.

MEDICAID RESERVE FUND TRANSFER

SECTION 10.15. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year and the sum of fifty million dollars ($50,000,000) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act.

EXPAND COMMUNITY CARE OF NORTH CAROLINA MANAGEMENT TO ADDITIONAL MEDICAID RECIPIENTS

SECTION 10.17.(a) The Department of Health and Human Services shall expand the scope of Community Care of NC care management model to recipients of Medicaid and dually eligible individuals with a chronic condition and long-term care needs. In expanding the scope, the Department shall focus on the Aged, Blind, and Disabled, and CAP-DA populations for improvement in management, cost-effectiveness, and local coordination of services through Community Care of NC and in collaboration with local providers of care. The Department shall target personal care services, private duty nursing, home health, durable medical equipment, ancillary professional services, specialty care, residential services, including skilled nursing facilities, home infusion therapy, pharmacy, and other services determined target-worthy by the Department. The Department shall pilot communitywide initiatives and shall expand statewide successful models.

SECTION 10.17.(b) The Department of Health and Human Services may work with the federal government to attain the necessary regulatory and policy relief to better align policy and economic incentives to improve care in the most cost-effective manner and attain savings through controlled utilization of services.

SECTION 10.17.(c) The Department of Health and Human Services may pay network and primary care providers an enhanced PMPM care management fee and shall also provide additional block grant funds for start-up during the pilot phase.

SECTION 10.17.(d) Community Care of NC and the Department of Health and Human Services shall review the prescribing of diagnostic testing by physicians to determine if overutilization is occurring. The Department shall include the results of the review in the report required under subsection (e) of this section. If the Department finds that overutilization is occurring, it shall implement a plan to reduce or eliminate the overutilization.

SECTION 10.17.(e) The Department of Health and Human Services shall report on the implementation of this section, including resulting savings and quality improvement benchmarks, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007.

TICKET TO WORK/MEDICAID ELIGIBILITY

SECTION 10.18.(a) Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ **108A-54.1. Medicaid buy-in for workers with disabilities.**

(a) Title. – This act may be cited as the Health Coverage for Workers With Disabilities Act. The Department shall implement a Medicaid buy-in eligibility category as permitted under P.L. 106-170, Ticket to Work and Work Incentives Improvement Act of 1999. The Department shall establish rules, policies, and procedures to implement this act in accordance with this section.

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

(1) 'FPG' means the federal poverty guidelines.

(2) 'HCWD' means Health Coverage for Workers With Disabilities.

(3) 'SSI' means Supplemental Security Income.

(4) 'Ticket to Work' means the Ticket to Work and Work Incentives Improvement Act of 1999.

(c) Eligibility. – An individual is eligible for HCWD if:

(1) The individual is at least 16 years of age and is less than 65 years of age;

(2) The individual meets Social Security Disability criteria, or the individual has been enrolled in HCWD and then becomes medically improved as defined in Ticket to Work and as further specified by the Department. An individual shall be determined to be eligible under this section without regard to the individual's ability to engage in, or actual engagement in, substantial gainful activity as defined in section 223 of the Social Security Act (42 U.S.C. § 423(d)(4)). In conducting annual redetermination of eligibility, the Department may not determine that an individual participating in HCWD is no longer disabled based solely on the individual's participation in employment or earned income;

(3) The individual's unearned income does not exceed one hundred fifty percent (150%) of FPG, and countable resources for the individual do not exceed the resource limit for the minimum community spouse resource standard under 42 U.S.C. § 1396r, and as further determined

by the Department. In determining an individual's countable income and resources, the Department may not consider income or resources that are disregarded under the State Medical Assistance Plan's financial methodology, including the sixty-five-dollar ($65.00) disregard, impairment-related work expenses, student earned-income exclusions, and other SSI program work incentive income disregards; and

(4) The individual is engaged in a substantial and reasonable work effort (employed) as provided in this subdivision and as further defined by the Department and allowable under federal law. For purposes of this subsection, "engaged in substantial and reasonable work effort" means all of the following:

a. Working in a competitive, inclusive work setting, or self-employed.

b. Earning at least the applicable minimum wage.

c. Having monthly earnings above the SSI basic sixty-five-dollar ($65.00) earned-income disregard.

d. Being able to provide evidence of paying applicable Medicare, Social Security, and State and federal income taxes.

The Department may impose additional earnings requirements in defining "engaged in substantial and reasonable work effort" for individuals who are eligible for HCWD based on medical improvement.

Individuals who participate in HCWD but thereafter become unemployed for involuntary reasons, including health reasons, shall have continued eligibility in HCWD for up to 12 months from the time of involuntary unemployment, so long as the individual (i) maintains a connection with the workforce, as determined by the Department, (ii) meets all other eligibility criteria for HCWD during the period, and (iii) pays applicable fees, premiums, and co-payments.

(d) Fees, Premiums, and Co-Payments. – Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars ($50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the North Carolina Health Choice Program."

SECTION 10.18.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, the sum of one hundred fifty thousand dollars ($150,000) for the 2006-2007 fiscal year shall be used to support the expansion of Medicaid eligibility authorized under subsection (a) of this section.

SECTION 10.18.(c) Subsection (b) of this section becomes effective July 1, 2006. Subsection (a) of this section becomes effective January 1, 2007, or within 30 days after the date on which the MMIS becomes operational, as determined by the Department of Health and Human Services, whichever occurs later. Client enrollment shall begin not later than six months from the date subsection (a) becomes effective. The remainder of this section is effective when it becomes law.

MEDICAID PERSONAL CARE SERVICES LIMITATIONS

SECTION 10.19.(a) The Department of Health and Human Services, Division of Medical Assistance, shall reduce the cost of providing personal care services under the Medicaid program by thirteen million seven hundred eleven thousand five hundred forty-two dollars ($13,711,542) for the 2005-2006 fiscal year and by sixteen million one hundred fifteen thousand three hundred eighty-nine dollars ($16,115,389) for the 2006-2007 fiscal year. The Department shall accomplish the reduction by implementing a utilization management system for Personal Care Services and Personal Care Services Plus. The management system may include reducing personal care services hours to 50 hours or otherwise managing personal care services. The Division of Medical Assistance shall work with Community Care of North Carolina (CCNC) to determine how CCNC can help with the review of the need for and utilization of personal care services.

SECTION 10.19.(b) The Division of Medical Assistance shall study and determine additional utilization/prior authorization systems for personal care services and other home- and community-based services that can be provided to individuals who meet medical criteria and that can be implemented when the new MMIS goes into effect. The Department of Health and Human Services, Division of Medical Assistance, shall report the plan for implementation of this section, including costs, not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

DDA GROUP HOME FUNDING

SECTION 10.19A.(a) The Department of Health and Human Services may develop a plan to use State funds appropriated to support group homes for persons with developmental disabilities to expand the funding available under the CAP-MR/DD waiver and to use the increased waiver funds, in part, to pay for group home services. In developing this plan, the Department shall ensure that the total funding available to the group homes is not reduced.

SECTION 10.19A.(b) The Department of Health and Human Services may submit a progress report on implementation of this section not later than February 1, 2006, and a final report not later than May 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

IMPLEMENT ELECTRONIC QUALITY PRESCRIPTION MANAGEMENT PROGRAM

SECTION 10.19B. The Department of Health and Human Services, Division of Medical Assistance, shall implement an Electronic Quality Prescription

Management program for prescription drugs through the use of personal data assistance (PDA) technology.

COMMUNITY ALTERNATIVE PROGRAMS REIMBURSEMENT SYSTEM

SECTION 10.20.(a) The Department of Health and Human Services, Division of Medical Assistance, shall study developing a new system for reimbursing the Community Alternatives Programs. The new system shall:

(1) Use a case-mix reimbursement system, similar to the one used by nursing facilities and home health agencies, to determine the level of care provided and the amount paid for the care provided;

(2) Incorporate into the case-mix system the home environment and social support systems; and

(3) Use the Resource Utilization Groups-III (RUG-III) to determine the level of need for Community Alternatives Programs services except for CAP-MR/DD program services.

SECTION 10.20.(b) Not later than May 1, 2006, the Department of Health and Human Services, Division of Medical Assistance, shall report on the development of the new system, including an implementation schedule. Full implementation of the new system shall be not later than January 1, 2007. The Department shall submit the report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

VERIFICATION OF STATE RESIDENCY FOR MEDICAL ASSISTANCE

SECTION 10.21A.(a) Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-55.3. Verification of State residency required for medical assistance.**

(a) At the time of application for medical assistance benefits, the applicant shall provide satisfactory proof that the applicant is a resident of North Carolina and that the applicant is not maintaining a temporary residence or abode incident to receiving medical assistance under this Part.

(b) An applicant may meet the requirements of subsection (a) of this section by providing at least two of the following documents:

(1) A valid North Carolina drivers license or other identification card issued by the North Carolina Division of Motor Vehicles.

(2) A current North Carolina rent or mortgage payment receipt, or current utility bill in the name of the applicant or the applicant's legal spouse showing a North Carolina address.

(3) A valid North Carolina motor vehicle registration in the applicant's name and showing the applicant's current address.

(4) A document showing that the applicant is employed in this State.

(5) One or more documents proving that the applicant's domicile in the applicant's prior state of domicile has ended, such as closing of a bank account, termination of employment, or sale of a home.

(6) The tax records of the applicant or the applicant's legal spouse, showing a current North Carolina address.

(7) A document showing that the applicant has registered with a public or private employment service in this State.

(8) A document showing that the applicant has enrolled the applicant's children in a public or private school or child care facility located in this State.

(9) A document showing that the applicant is receiving public assistance or other services requiring proof of domicile, other than medical assistance, in this State.

(10) Records from a health department or other health care provider located in this State showing the applicant's current North Carolina address.

(11) A written declaration made under penalty of perjury from a person who has a social, family, or economic relationship with the applicant and who has personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.

(12) Current North Carolina voter registration card.

(13) A document from the U.S. Department of Veterans Affairs, U.S. Military, or the U.S. Department of Homeland Security verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.

(14) Official North Carolina school records, signed by school officials, or diplomas issued by North Carolina schools, including secondary schools, community colleges, colleges, and universities verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.

(15) A document issued by the Mexican consular or other foreign consulate verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.

(c) For applicants, including those who are homeless or migrant laborers, who declare under penalty of perjury that they do not have two of the verifying documents in subsection (b) of this section, any other evidence that verifies residence may be considered. However, except for applicants of emergency Medicaid, a declaration, affidavit, or other statement from the applicant or another person that the applicant meets the requirements of G.S. 108A-24(6) is insufficient in the absence of other credible evidence. For applicants of emergency Medicaid, a declaration, affidavit, or other statement from the applicant's employer, clergy, or other person with personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment satisfies the requirements of this subsection.

(d) The Division of Medical Assistance shall not provide payment for medical assistance provided to an applicant unless or until the applicant has met the proof of residency requirements of this section.

(e) Unless otherwise provided for under Title 19 of the Social Security Act, a child under age 18 is a resident of the state where the child's parent or legal guardian is domiciled.

(f) This section does not apply to an applicant whose eligibility for medical assistance is excepted from State residency requirements under federal law.

(g) Nothing in this section shall be construed to establish North Carolina residency for a nonqualified alien who is present in North Carolina for a temporary or unspecified period of time unless the applicant is legally admitted for employment purposes."

SECTION 10.21A.(b) This section becomes effective January 1, 2006.

MEDICAID ESTATE RECOVERY TO INCLUDE LIENS ON REAL PROPERTY

SECTION 10.21C.(a) G.S. 108A-70.5 reads as rewritten:

"§ **108A-70.5. Medicaid Estate Recovery Plan.**

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of ~~1993, to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid the recipient.~~1993. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p). To the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department may impose liens against real property, including the home, of a recipient of medical assistance. The Department shall file any liens imposed under this section in the court where the property is located in the same manner as for any other lien under North Carolina law.

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient of any age is receiving ~~these~~ medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving ~~these medical care services, including related hospital care and prescription drugs, for nursing facility services, personal care services, or home- and community-based services.~~one or more of the following medical care services:

1. Nursing facility services.
2. Home and community-based services.
3. Hospital care and prescription drugs related to nursing facility services or home and community-based services.
4. Personal care services.
5. Medicare premiums.
6. Private duty nursing.
7. Home health aide services.
8. Home health therapy.
9. Speech pathology services.

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(3) "Home" means property in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or

legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. ~~The~~ To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the ~~Plan, including rules to waive whole or partial recovery when this recovery would be inequitable because it would work an undue hardship or because it would not be administratively cost-effective and rules~~ Plan to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program."

SECTION 10.21C.(b) Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new sections to read:

"**§ 108A-70.6. Postponement of estate recovery required in cases of undue hardship.**

(a) The Department shall postpone or waive its claim pursuant to G.S. 108A-70.5, including the execution of a lien in whole or in part, when the Department determines that the enforcement of its claim would work an undue hardship to an heir or a beneficiary of the Medicaid recipient. Nothing in this section shall be construed to prevent the Department from enforcing its claim if the owner of the property sells or transfers ownership of the property that is subject to the Department's claim.

(b) A claim of undue hardship to an heir or beneficiary shall be made in writing to the Department within 30 days after the receipt of notification of the Medicaid lien or claim. The claim for hardship shall describe the financial circumstance of the heir or beneficiary and the basis for the claim.

(c) An undue hardship exists if:

(1) The property subject to the lien has a tax value that is equal to or less than thirty thousand dollars ($30,000).

(2) The property subject to the Department's claim is the sole source of income for a surviving heir or beneficiary, and the loss of the net income derived from the property would result in the heir's or beneficiary's annual gross income to fall below one hundred percent (100%) of the federal poverty guidelines in the year in which the hardship is claimed; or

(3) The sale of the property would be required to satisfy the Department's claim, and all of the following conditions are met:

a. The heir or beneficiary resided in the decedent's home on a continual basis for at least 24 months immediately prior to the date of the recipient's death and the heir or beneficiary was using the property as a principal place of residence on the date of the recipient's death;

b. The heir or beneficiary has, from the time the Department first presents its claim for recovery against the deceased recipient's estate and after, annual gross income in the amount not exceeding one hundred fifty percent (150%) of the federal poverty income standard;

c. The heir or beneficiary owns no other real property or agrees to sell other real property in partial payment of the Department's claim; and

d. The heir or beneficiary owns other assets not exceeding a net value of thirty thousand dollars ($30,000).

"**§ 108A-70.7. Estate recovery not cost effective.**

The Department shall waive its claim or lien imposed under G.S. 108A-70.5 upon the Department's determination that:

(1) The amount of Medicaid payments for services and benefits subject to recovery is less than eight thousand dollars ($8,000); or

(2) The assets subject to the Department's claim or lien are less than five thousand dollars ($5,000).

"**§ 108A-70.8. Notice of estate recovery.**

(a) The Department shall provide each applicant for medical assistance, or the applicant's representative, written notice that:

(1) Receipt of medical assistance may result in a Medicaid claim or lien upon the recipient's estate, including the recipient's home, to recover costs paid on behalf of the recipient for medical assistance in accordance with G.S. 108A-70.5; and

(2) The Department may seek a lien against the real property of a recipient of any age before or after the recipient's death in the amount of assistance paid or to be paid for the recipient if the recipient is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and the Department determines, after notice and an opportunity for a hearing in accordance with applicable law, that the recipient cannot reasonably be expected to be discharged and return home.

(b) Notice under this section shall also explain the hardship conditions under which estate recovery, including the execution of a lien, may be postponed or waived.

"**§ 108A-70.9. County departments of social services to provide information.**

The Department may require the county department of social services administering medical assistance to gather and provide the Department with the information and administrative or legal assistance needed to recover medical assistance under G.S. 108A-70.5. The Department shall pay to the county department of social services an amount equal to twenty percent (20%) of the nonfederal share of recovery collected by the Department. The Department may withhold payments under this section for a

county department's failure to comply with the Department's requirements under this section."

SECTION 10.21C.(c) This section becomes effective January 1, 2006, and applies to recipients of medical assistance on or after that date.

MEDICAID STUDY

SECTION 10.21E. The Department of Health and Human Services shall study Medicaid services for individuals who are dually eligible for Medicaid and Medicare, particularly including the Medicare Part D impact on these services, the financial impact on the State of Medicare clawback provisions, and efficiencies that can be realized in services for this dually eligible population. The study shall also include the impact on the Medicaid program as a whole. The Department shall report the results of the study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than May 1, 2006.

NC HEALTH CHOICE

SECTION 10.22.(a) Effective January 1, 2006, the Department of Health and Human Services may allow up to three percent (3%) enrollment growth in the NC Health Choice Program every six months.

SECTION 10.22.(b) Effective January 1, 2006, G.S. 108A-70.21(a) reads as rewritten:

"(a) Eligibility. – The Department may enroll eligible children based on availability of funds. Following are eligibility and other requirements for participation in the Program:

(1) Children must:

a. Be ~~under the age of 19;~~between the ages of 6 through 18;

b. Be ineligible for Medicaid, Medicare, or other federal government-sponsored health insurance;

c. Be uninsured;

d. Be in a family ~~that meets the following family income requirements:~~

~~1. Infants under the age of one year whose family income is from one hundred eighty-five percent (185%) through two hundred percent (200%) of the federal poverty level;~~

~~2. Children age one year through five years whose family income is above one hundred thirty-three percent (133%) through two hundred percent (200%) of the federal poverty level; and~~

~~3. Children age six years through eighteen years~~

whose family income is above one hundred percent (100%) through two hundred percent (200%) of the federal poverty level;

e. Be a resident of this State and eligible under federal law; and

f. Have paid the Program enrollment fee required under this Part.

(2) Proof of family income and residency and declaration of uninsured status shall be provided by the applicant at the time of application for Program coverage. The family member who is legally responsible for

the children enrolled in the Program has a duty to report any change in the enrollee's status within 60 days of the change of status.

(3) If a responsible parent is under a court order to provide or maintain health insurance for a child and has failed to comply with the court order, then the child is deemed uninsured for purposes of determining eligibility for Program benefits if at the time of application the custodial parent shows proof of agreement to notify and cooperate with the child support enforcement agency in enforcing the order.

If health insurance other than under the Program is provided to the child after enrollment and prior to the expiration of the eligibility period for which the child is enrolled in the Program, then the child is deemed to be insured and ineligible for continued coverage under the Program. The custodial parent has a duty to notify the Department within 10 days of receipt of the other health insurance, and the Department, upon receipt of notice, shall disenroll the child from the Program. As used in this paragraph, the term "responsible parent" means a person who is under a court order to pay child support.

(4) Except as otherwise provided in this section, enrollment shall be continuous for one year. At the end of each year, applicants may reapply for Program benefits."

SECTION 10.22.(c) G.S. 108A-70.21(b) reads as rewritten:

"(b) Benefits. – Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost-sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan, including optional prepaid plans. ~~Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, ninety percent (90%) of the average wholesale price for the prescription drug or the amounts published by the Centers for Medicare and Medicaid Services plus a dispensing fee of five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand name drugs. All other health care providers providing services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for services less any copayments assessed to enrollees under this Part.~~

~~No child enrolled in the Plan's self-insured indemnity program shall be required by the Plan to change health care providers as a result of~~ being enrolled in the Program.~~

In addition to the benefits provided under the Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

(1) Dental: Oral examinations, teeth cleaning, and scaling twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, fluoride applications twice during a 12-month period, fluoride varnish, sealants, simple extractions, therapeutic pulpotomies, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth-colored filling material to restore diseased teeth. No benefits are to be provided for services under this subsection that are not performed by or upon the direction

of a dentist, doctor, or other professional provider approved by the Plan nor for services and materials that do not meet the standards accepted by the American Dental Association.

(2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval of the Plan. Upon prior approval by the Plan, refractions may be covered more often than once every 12 months.

(3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other hearing aid specialist approved by the Plan. Prior approval of the Plan is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.

~~The Department may provide services to children aged birth through five years enrolled in the Program through the State Medical Assistance managed care program. Services provided through the managed care program shall be paid from Program funds.~~

Effective January 1, 2006, the Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid."

SECTION 10.22.(d) G.S. 108A-70.21 is amended by adding the following new subsection to read:

"(b1) Payments. – Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, amounts allowable for prescription drugs under Medicaid. For all other providers, effective no later than January 1, 2006, services provided to children enrolled in the Program shall be provided at rates equivalent to one hundred fifteen percent (115%) of Medicaid rates, less any co-payments assessed to enrollees under this Part. Effective July 1, 2006, services provided to these children shall be provided at rates equivalent to one hundred percent (100%) of Medicaid rates, less any co-payments assessed to enrollees under this Part. Effective until rates equivalent to one hundred fifteen percent (115%) of Medicaid rates become effective, providers of services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for services less any co-payments assessed to enrollees under this Part."

LONG-TERM PLAN FOR MEETING MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES NEEDS

SECTION 10.24.(a) The Secretary of the Department of Health and Human Services shall, in consultation with interested advocacy groups and affected State and local agencies, develop a long-range plan for addressing the mental health, developmental disabilities, and substance abuse services needs of the State. The plan shall be consistent with the plan developed pursuant to G.S. 122C-102 and shall address the following:

(1) The services needed at the community level within each LME in order to ensure an adequate level of services to the average number of persons needing the services based on population projections.

(2) The full continuum of services needed for each disability group within an LME, including:

a. Which services could be regional or multi-LME based;

b. What percent of the population each LME would expect to use State-level facilities; and

c. An inventory of existing services within each LME for each disability group, and the gaps that exist;

(3) Projected growth in services for each disability group within each LME or region that can reasonably be managed over the ensuing five-year period; and

(4) Projected start-up costs and the total funding needed in each year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to implement the long-range plan.

Funds shall not be transferred from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs until the Secretary has consulted with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Chairs of the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services.

SECTION 10.24.(b) The Department shall use not less than fifty percent (50%) of moneys in the Trust Fund established pursuant to G.S. 143-15D for the 2005-2006 fiscal year for nonrecurring start-up funds for community-based services, including funding for existing area program services to transition to the private sector or to another public service agency. Moneys in the Trust Fund may be used to expand recurring community-based services only if sufficient recurring funds can be identified within the Department from funds currently budgeted for mental health, developmental disabilities, and substance abuse services, area mental health programs or county programs, or local government.

SECTION 10.24.(c) Not later than March 1, 2006, the Department of Health and Human Services shall report on the implementation of this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

COMPREHENSIVE TREATMENT SERVICES PROGRAM

SECTION 10.25.(a) The Department of Health and Human Services shall continue the Comprehensive Treatment Services Program for children at risk for institutionalization or other out-of-home placement. The Program shall be implemented by the Department in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary residential and nonresidential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children. Program funds may also be used to expand a system-of-care approach for services to children and their families statewide. The program shall include the following:

(1) Behavioral health screening for all children at risk of institutionalization or other out-of-home placement.
(2) Appropriate and medically necessary residential and nonresidential services for deaf children.
(3) Appropriate and medically necessary residential and nonresidential treatment services, including placements for sexually aggressive youth.
(4) Appropriate and medically necessary residential and nonresidential treatment services, including placements for youth needing substance abuse treatment services and children with serious emotional disturbances.
(5) Multidisciplinary case management services, as needed.
(6) A system of utilization review specific to the nature and design of the Program.
(7) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.
(8) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.
(9) Other appropriate components to accomplish the Program's purpose.
(10) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.
(11) A system of identifying and tracking children placed outside of the family unit in group homes, therapeutic foster care home settings, and other out-of-home placements.

SECTION 10.25.(b) In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

(1) Provide only those treatment services that are medically necessary.
(2) Implement utilization review of services provided.
(3) Adopt the following guiding principles for the provision of services:
    a. Service delivery system must be outcome-oriented and evaluation-based.
    b. Services should be delivered as close as possible to the child's home.

c. Services selected should be those that are most efficient in terms of cost and effectiveness.
d. Services should not be provided solely for the convenience of the provider or the client.
e. Families and consumers should be involved in decision making throughout treatment planning and delivery.

(4) Implement all of the following cost-reduction strategies:
a. Preauthorization for all services except emergency services.
b. Levels of care to assist in the development of treatment plans.
c. Clinically appropriate services.

SECTION 10.25.(c) The Department shall collaborate with other affected State agencies such as the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and with local departments of social services, area mental health programs, and local education agencies to eliminate cost shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

SECTION 10.25.(d) The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the Department of Health and Human Services, the Department of Public Instruction, and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until the Memoranda of Agreement between local departments of social services, area mental health programs, local education agencies, and the Administrative Office of the Courts and the Department of Juvenile Justice and Delinquency Prevention, as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall address issues pertinent to local implementation of the Program, including provision for the immediate availability of student records to a local school administrative unit receiving a child placed in a residential setting outside the child's home county.

SECTION 10.25.(e) Notwithstanding any other provision of law to the contrary, services under the Comprehensive Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

SECTION 10.25.(f) Of the funds appropriated in this act for the Comprehensive Treatment Services Program, the Department of Health and Human Services shall establish a reserve of three percent (3%) to ensure availability of these funds to address specialized needs for children with unique or highly complex problems.

SECTION 10.25.(g) The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected agencies, shall report on the following Program information:

(1) The number and other demographic information of children served.
(2) The amount and source of funds expended to implement the Program.
(3) Information regarding the number of children screened, specific placement of children, including the placement of children in programs or facilities outside of the child's home county, and treatment needs of children served.

(4) The average length of stay in residential treatment, transition, and return to home.

(5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.

(6) Recommendations on other areas of the Program that need to be improved.

(7) Other information relevant to successful implementation of the Program.

SECTION 10.25.(h) It is the intent of the General Assembly to (i) improve the safety and well-being of North Carolina's children, youth, and families; (ii) support collaboration among State, regional, and local agencies that deliver services to children, youth, and families; (iii) make more effective use of existing federal, State, and local resources and programs for children, youth, and families; and (iv) streamline service delivery, fill service gaps, and eliminate duplication of services for children, youth, and families.

The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and other affected State agencies share responsibility and accountability to assure effective collaboration among State and local agencies to improve outcomes for children and their families leading to full participation in their communities and schools.

The General Assembly recognizes that services to children, youth, and families are most effective when they are child- and family-centered, strengths-based, community-based, use multidisciplinary approaches, use evidence-based practices when appropriate, and recognize and respect cultural differences. These practices can be successfully implemented only where there is significant and ongoing collaboration and coordination among multiple public agencies. The General Assembly also recognizes that while agencies are making significant progress towards implementing these practices, there is also a need to focus State-level policy in order to provide support, remove barriers, and more fully implement these goals.

There is established a children's services work group. It shall be located in the Department of Administration for budgetary and staffing purposes only. The Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court shall each designate at least one representative to serve on the work group from among the programs, divisions, or departments under that administrator's control that provide services to children and youth. Each administrator named in the preceding sentence shall also appoint to serve on the work group at least one parent of a child or youth who has or is at risk for behavioral, social, health, or safety problems or academic failure, at least one member of a local collaborative body, and at least one private sector service provider. The Chair of the State Board of Education and the Superintendent of Public Instruction may make joint appointments.

The work group shall meet at least monthly. The first meeting of the work group shall occur not less than 30 days after the effective date of this section. The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and the Administrative Office of the Courts shall, in this order and on a rotating basis, host the monthly

meetings of the work group. The Department of Administration shall provide staff and clerical support to the work group. The work group shall:

(1) Identify common outcome measures for child-serving agencies that can be used for monitoring the safety, health, and well-being of North Carolina's children, youth, and families, including preventative measures.

(2) Identify strategies for funding flexibility between State and local agencies, including shared funding streams and the removal of financial and bureaucratic barriers.

(3) Develop a common service terminology to be used across child-serving agencies that is appropriate and assists collaboration and coordination.

(4) Make recommendations regarding the creation of a shared database to track population and program outcomes information while protecting individual confidentiality.

(5) Develop mechanisms that would allow agencies to share information about individual children receiving multiple services. Any recommendations must take into account confidentiality requirements, be voluntary on the part of the party receiving services, and be time-limited. The mechanisms may address intake, assessment, and release procedures.

(6) Examine State and local training needs for implementing increased coordination and collaboration.

(7) Study other issues the work group determines would improve coordination and collaboration between child-serving agencies.

A majority of the work group shall constitute a quorum for the transaction of business.

Members of the work group shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5 or G.S. 138-6 as appropriate.

Upon the approval of the Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court, the work group shall submit its findings and recommendations to the Coordination of Children's Services Study Commission created under Section 4 of this act. The work group shall submit an interim report no later than December 15, 2005, and a final report no later than April 15, 2006. The reports shall specify those recommendations that may be implemented without statutory changes and those that would require statutory authorization.

If the General Assembly has not adjourned by those dates, or if the membership of the Study Commission has not been appointed, the work group shall submit its reports to the Joint Legislative Education Oversight Committee, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Joint Legislative Health Care Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

The work group shall expire upon the filing of the final report.

SECTION 10.25.(i) There is created the Coordination of Children's Services Study Commission ("Commission"). The Commission shall consist of 18 members appointed as follows:

(1) Nine members appointed by the Speaker of the House of Representatives as follows:
   a. Five members of the House of Representatives, of whom at least one shall also serve on the House of Representatives Health and Human Services Appropriations Subcommittee, at least one shall also serve on the Joint Legislative Education Oversight Committee, at least one shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one shall also serve on a House of Representatives Judiciary Committee; and
   b. Four members of the public, including a district court judge, a member of a local collaborative body, a private sector service provider, and a parent of a child who has or is at risk for behavioral, social, health, or safety problems or academic failure.

(2) Nine members appointed by the President Pro Tempore of the Senate as follows:
   a. Five members of the Senate, of whom at least one shall also serve on the Senate Health and Human Services Appropriations Subcommittee, at least one shall also serve on the Joint Legislative Education Oversight Committee, at least one shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one shall also serve on a Senate Judiciary Committee; and
   b. Four members of the public, including a parent of a child who has or is at risk for behavioral, social, health, or safety problems or academic failure, a child who has or is at risk for behavioral, social, health, or safety problems or academic failure, a member of a local board of education, and a member of a board of county commissioners.

The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 10.25.(j) The purpose of the Commission is to study and recommend changes to improve collaboration and coordination among agencies that provide services to children, youth, and families with multiple service needs. The Commission's recommendations shall include mechanisms for establishing clear State leadership, consistent policy direction, and increased accountability at the State and local levels. As part of its work, the Commission shall:

(1) Identify existing State, regional, and local collaborative bodies (including their charges, scopes of authority, and accountability requirements) that have been created by legislation, administrative

rule, or agency policy and that are charged with serving, protecting, or improving the well-being of North Carolina's children, youth, and families. Once it has identified the collaborative bodies, the Commission shall consider how they could be consolidated, reorganized, or eliminated in order to improve their effectiveness and accountability, increase the likelihood that key players will actively participate, and reduce unnecessary duplication of effort. The Commission shall also consider the creation of a mechanism for coordination and communication among the State and local collaborative bodies, incentives for collaboration, clarification of roles among agencies, and ways to monitor the extent to which groups are collaborating.

(2) Study the practices of agencies currently implementing a system of care platform of practices and make recommendations regarding whether to adopt those practices statewide and across child-serving agencies as the preferred mechanism for providing services to children, youth, and families. In examining this issue, the Commission shall identify those State and local agencies that are currently implementing practices that are consistent with a system of care, those states that have implemented a system of care as a statewide policy initiative, and the extent to which a system of care is cost-effective.

(3) The Commission shall also examine the following principles that are associated with a system of care and determine whether to recommend the adoption of a State policy that reflects these principles:

a. Services for children should promote success, safety, and permanence.
b. Services should be child- and family-centered, giving priority to keeping children with their families, in their home, school, and community.
c. Services should actively promote early identification and intervention.
d. Services should be designed to protect the rights of children.
e. Services shall be integrated and comprehensive, addressing the child's physical, educational, social, and emotional needs through a single child and family team.
f. Services shall be outcomes-accountable and tied to a unified child and family plan.
g. Agency resources and services shall be shared and coordinated.
h. Services shall be provided as close to home as appropriate in the least restrictive setting consistent with what is known to be effective.
i. Services shall be culturally competent.
j. Services shall address the unique strengths, needs, and potential of each child and family, and shall be sufficiently flexible to meet highly individualized child and family needs.
k. Management of the child-serving system is a responsibility shared among all public and private child-serving agencies that should be held collectively accountable for outcomes.

(4) In reviewing principles relating to a system of care, the Commission shall determine whether they articulate goals that are measurable and if not, determine whether they could be modified to reflect measurable goals.

(5) Receive and study the recommendations contained in the reports submitted by the work group created in Section 2 of this act and determine whether to recommend any of the statutory proposals.

(6) Study any other issues the Commission determines would improve coordination and collaboration among child-serving agencies.

SECTION 10.25.(k) Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Professional staff shall be those assigned to subject areas or agencies involving child-serving programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and the Department of Public Instruction. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The members of the Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1, 138-5, or 138-6 as appropriate.

SECTION 10.25.(m) The Department shall report on April 1, 2006, and April 1, 2007, on the implementation of subsections (a) through (g) of this section. The Coordination of Children's Services Study Commission, established under this section, shall report annually on April 1. The reports required under this subsection shall be made to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

SERVICES TO MULTIPLY DIAGNOSED ADULTS

SECTION 10.26.(a) In order to ensure that multiply diagnosed adults are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these adults:

(1) Implement the following guiding principles for the provision of services:

a. Service delivery system must be outcome-oriented and evaluation-based.

b. Services should be delivered as close as possible to the consumer's home.

c. Services selected should be those that are most efficient in terms of cost and effectiveness.

d. Services should not be provided solely for the convenience of the provider or the client.

e. Families and consumers should be involved in decision making throughout treatment planning and delivery.

(2) Provide those treatment services that are medically necessary.

(3) Implement utilization review of services provided.

SECTION 10.26.(b) The Department of Health and Human Services shall implement all of the following cost-reduction strategies:

(1) Preauthorization for all services except emergency services.

(2) Criteria for determining medical necessity.

(3) Clinically appropriate services.

SECTION 10.26.(c) No State funds shall be used for the purchase of single-family or other residential dwellings to house multiply diagnosed adults.

SECTION 10.26.(d) The Department shall report on implementation of this section on May 1, 2006, and again on May 1, 2007, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

EXTEND MENTAL HEALTH CONSUMER ADVOCACY PROGRAM CONTINGENT UPON FUNDS APPROPRIATED BY THE 2007 GENERAL ASSEMBLY

SECTION 10.27. Section 4 of S.L. 2001-437, as amended by Section 10.30 of S.L. 2002-126, and as further amended by Section 10.10 of S.L. 2003-284, reads as rewritten:

"**SECTION 4.** Sections 1.1 through 1.21(b) of this act become effective July 1, 2002. ~~Section 2 of this act becomes effective only if funds are appropriated by the 2005 General Assembly for that purpose.~~ Section 2 of this act becomes effective July 1 of the fiscal year for which funds are appropriated by the ~~2005~~ General Assembly for that purpose. The remainder of this act is effective when it becomes law."

TRANSITION PLANNING FOR STATE PSYCHIATRIC HOSPITALS

SECTION 10.28.(a) In keeping with the United States Supreme Court decision in Olmstead vs. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:

(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.

(3) Individuals shall receive evidenced-based psychiatric services and care that are cost-efficient.

(4) The State shall minimize cost shifting to other State and local facilities or institutions.

SECTION 10.28.(b) The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

SECTION 10.28.(c) In accordance with the plan established in subsections (a) and (b) of this section, any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. These funds shall be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with G.S. 143-15.3D. Recurring savings realized through implementation of this section shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, (i) for implementation of subsections (a) and (b) of this section and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W.

SECTION 10.28.(d) The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2005, and May 1, 2006.

MENTAL RETARDATION CENTER DOWNSIZING

SECTION 10.29.(a) In accordance with the Department of Health and Human Services' plan for mental health, developmental disabilities, and substance abuse services system reform, the Department shall ensure that the downsizing of the State's regional mental retardation facilities is continuously based upon residents' needs and the availability of community-based services with a targeted goal of four percent (4%) each year. The Department shall implement cost-containment and reduction strategies to ensure the corresponding financial and staff downsizing of each facility. The Department shall manage the client population of the mental retardation centers in order to ensure that placements for ICF-MR level of care shall be made in non-State facilities. Admissions to State ICF-MR facilities are permitted only as a last resort and only upon approval of the Department. The corresponding budgets for each of the State mental retardation centers shall be reduced, and positions shall be eliminated as the census of each facility decreases. At no time shall mental retardation center positions be transferred to other units within a facility or assigned nondirect care activities such as outreach.

SECTION 10.29.(b) The Department of Health and Human Services shall apply any savings in State appropriations in each year of the 2005-2007 fiscal biennium that result from reductions in beds or services as follows:

(1) The Department shall place nonrecurring savings in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs and use the savings to facilitate the transition of clients into appropriate community-based services and support in accordance with G.S. 143-15.3D;

(2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall retain recurring savings realized through implementation of this section to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W. In determining the savings in this section, savings shall include all savings realized from the downsizing of the State mental retardation centers, including the savings in direct State appropriations in the budgets of the State mental retardation centers; and

(3) The Department of Health and Human Services, Division of Medical Assistance, shall transfer any recurring Medicaid savings resulting from the downsizing of State-operated MR centers from the ICF-MR line in Medicaid to the CAP-MR/DD line.

SECTION 10.29.(c) Consistent with the requirements of this section, the Secretary of Health and Human Services shall develop a plan to ensure that there are sufficient developmental disability/mental retardation regional centers to correspond with service catchment areas. The Plan shall address:

(1) Methods of funding for community services necessitated by down-sizing;

(2) How many State-operated beds and non-State operated beds are needed to serve the population; and

(3) Alternative uses for facilities.

Not later than April 1, 2006, the Department shall report on the development of the plan, and not later than April 1, 2007, shall report the final plan, including recommendations for legislative action, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.29.(d) The Department of Health and Human Services shall report on its progress in complying with this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The Department shall submit the progress report no later than January 15, 2006, and submit a final report no later than May 1, 2006.

PRIVATE AGENCY UNIFORM COST-FINDING REQUIREMENT

SECTION 10.30. G.S. 122C-147.2 reads as rewritten:

"§ **122C-147.2. Purchase of services and reimbursement rates.**

(a) When funds are used to purchase services, the following provisions apply:

(1) Reimbursement rates for specific types of service shall be negotiated between the Secretary and the area authority. The negotiation shall begin with the rate determined by ~~the~~ a standardized cost-finding and rate-setting procedure ~~that is required by G.S. 122C-143.2(a) or by another method~~ approved by the Secretary.

(2) The reimbursement rate used for the payment of services shall incorporate operating and administrative costs, including costs for property in accordance with G.S. 122C-147.

(b) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with subsection (a) of this section. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding. If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office."

DHHS POLICIES AND PROCEDURES IN DELIVERING COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

SECTION 10.31. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall in cooperation with area mental health authorities and county programs, identify and eliminate administrative and fiscal barriers created by existing State and local policies and procedures in the delivery of community-based mental health, developmental disabilities, and substance abuse services provided through the area programs and county programs, including services provided through the Comprehensive Treatment Services Program for Children and services delivered to multiply diagnosed adults. The Department shall implement changes in policies and procedures in order to facilitate all of the following:

(1) The provision of services to adults and children as defined in the Mental Health System Reform State Plan as priority or targeted populations.

(2) A revised system of allocating State and federal funds to area mental health authorities and county programs that reflects projected needs, including the impact of system reform efforts rather than historical allocation practices and spending patterns.

(3) The provision of services to children not deemed eligible for the Comprehensive Treatment Services Program for Children, but who would otherwise be in need of medically necessary treatment services to prevent out-of-home placement.

(4) The provision of services in the community to adults remaining in and being placed in State institutions addressed in Olmstead v. L.C.

Area mental health, developmental disabilities, and substance abuse services authorities and county programs shall use all funds appropriated for and necessary to provide mental health, developmental disabilities, and substance abuse services to meet the need for these services. If excess funds are available after expending appropriated funds to fully meet service needs, one-half of these excess funds shall not revert to the General Fund but shall be transferred to the Trust Fund for Mental Health,

Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, except that one-half of the funds appropriated for the Comprehensive Treatment Services Program for Children that are unexpended and unencumbered shall not revert to the General Fund but shall be carried forward and used only for services for children and adolescents.

The Department, in consultation with the area mental health authorities and county programs, shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the progress in implementing these changes. The report shall be submitted on October 1, 2005, and February 1, 2006.

RULES PERTAINING TO CONFLICT OF INTEREST IN REFERRALS TO PROVIDER AGENCIES

SECTION 10.33. G.S. 122C-26 reads as rewritten:

"§ **122C-26. Powers of the Commission.**

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

(1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;

(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;

(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;

(4) Adopt rules for the waiver of rules adopted under this Article; and

(5) Adopt rules applicable to facilities licensed under this Article:

a. Establishing personnel requirements of staff employed in facilities;

b. Establishing qualifications of facility administrators or directors;

c. Establishing requirements for death reporting including confidentiality provisions related to death reporting; ~~and~~

d. Establishing requirements for patient ~~advocates.~~ advocates; and

e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety."

LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO STUDY OVERSIGHT AND MONITORING BY DEPARTMENT OF HEALTH AND HUMAN SERVICES OF SERVICES TO MENTAL HEALTH CONSUMERS

SECTION 10.34. The Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the oversight and monitoring roles and activities of the Divisions of: Social Services, Facility Services, Medical Assistance, and Mental Health, Developmental Disabilities,

and Substance Abuse Services, of the Department of Health and Human Services. The study shall focus on how the oversight and monitoring activities benefit consumers of mental health, developmental disabilities, and substance abuse services in residential settings, and shall include in its report recommendations on ensuring quality of care and increasing efficiency in the provision of services. The Oversight Committee shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than April 1, 2006.

APPEALS PROCESS FOR CLIENTS OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES PROGRAMS

SECTION 10.35.(a) G.S. 143B-147(a) is amended by adding the following new subdivision to read:

"(9) To adopt rules establishing a process for non-Medicaid eligible clients to appeal to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services decisions made by an area authority or county program affecting the client. The purpose of the appeal process is to ensure that mental health, developmental disabilities, and substance abuse services are delivered within available resources, to provide an additional level of review independent of the area authority or county program to ensure appropriate application of and compliance with applicable statutes and rules, and to provide additional opportunities for the area authority or county program to resolve the underlying complaint. Upon receipt of a written request by the non-Medicaid eligible client, the Division shall review the decision of the area authority or county program and shall advise the requesting client and the area authority or county program as to the Division's findings and the bases therefor. Notwithstanding Chapter 150B of the General Statutes, the Division's findings are not a final agency decision for purposes of that Chapter. Upon receipt of the Division's findings, the area authority or county program shall issue a final decision based on those findings. Nothing in this subdivision shall be construed to create an entitlement to mental health, developmental disabilities, and substance abuse services."

SECTION 10.35.(b) The Commission shall commence the rule-making process in a timely manner to ensure, insofar as possible given the time constraints of Chapter 150B of the General Statutes, that the rules become effective not later than July 1, 2006.

DHHS STUDY OF ACCREDITATION OF RESIDENTIAL TREATMENT FACILITIES

SECTION 10.35A.(a) The Department of Health and Human Services shall study the feasibility of establishing accreditation requirements for residential treatment facilities. In conducting the study, the Department shall identify accreditation organizations and a review of their standards and shall consider the following:

(1) The financial and other impact accreditation will have on the facilities affected.
(2) The feasibility of developing an alternative to accreditation for small facilities.
(3) The potential for a reduction in the number of visits required by a local management entity if a residential facility were accredited.
(4) Review of accreditation requirements of other states.
(5) Cost of accreditation to the State and affected providers.
(6) The specific requirements to meet accreditation.

SECTION 10.35A.(b) The Department of Health and Human Services shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

APPROVAL OF RULES GOVERNING RESIDENTIAL TREATMENT FOR CHILDREN OR ADOLESCENTS

SECTION 10.35B. Notwithstanding G.S. 150B-21.1(b) and G.S. 150B-21.3(b2), the Department of Health and Human Services may adopt as temporary rules the rules governing residential treatment for children or adolescents approved for adoption or revision on May 18, 2005, by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and approved by the Rules Review Commission. The temporary rules shall become effective as provided in G.S. 150B-21.3(a).

CONTROLLED SUBSTANCES REPORTING

SECTION 10.36.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5D.

"North Carolina Controlled Substances Reporting System Act.

"§ **90-113.60. Short title.**

This Article shall be known and may be cited as the "North Carolina Controlled Substances Reporting System Act."

"§ **90-113.61. Legislative findings and purpose.**

(a) The General Assembly makes the following findings:
(1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.
(2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.
(3) The number of unintentional deaths from illicit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.
(4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.
(5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).
(6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.

(7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.

(8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.

(9) Review of data from controlled substances reporting systems help:

a. Support the legitimate medical use of controlled substances.

b. Identify and prevent diversion of prescribed controlled substances.

c. Reduce morbidity and mortality from unintentional drug overdoses.

d. Reduce the costs associated with the misuse and abuse of controlled substances.

e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.

f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.

g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.

(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

"§ **90-113.62. Definitions.**

The following definitions apply in this Article:

(1) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(2) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).

(3) "Department" means the Department of Health and Human Services.

(4) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:

a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.

b. A person authorized to administer such a substance pursuant to Chapter 90 of the General Statutes.

c. A wholesale distributor of a Schedule II through V controlled substance.

(5) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household.

"§ **90-113.63. Requirements for controlled substances reporting system.**

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall

submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section on a monthly basis for the first 12 months of the Controlled Substances Reporting System's operation, and twice monthly thereafter.

(b) The Commission for Health Services shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

(1) The dispenser's DEA number.

(2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:

a. Full address, including city, state, and zip code,

b. Telephone number, and

c. Date of birth.

(3) The date the prescription was written.

(4) The date the prescription was filled.

(5) The prescription number.

(6) Whether the prescription is new or a refill.

(7) Metric quantity of the dispensed drug.

(8) Estimated days of supply of dispensed drug, if provided to the dispenser.

(9) National Drug Code of dispensed drug.

(10) Prescriber's DEA number.

"§ **90-113.64. Confidentiality.**

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

(1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.

(2) An individual who requests the individual's own controlled substances reporting system information.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The

SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.

(4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.

(5) To a court pursuant to a lawful court order in a criminal action.

(6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.

(7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old.

"**§ 90-113.65. Civil penalties; other remedies; immunity from liability.**

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this section or a rule adopted pursuant to this section shall be assessed a civil penalty not to exceed five thousand dollars ($5,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this section may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the individual.

(c) A health care provider licensed, or an entity permitted under this Chapter that, in good faith, makes a report or transmits data required by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data.

"**§ 90-113.66. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules.**

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules necessary to implement this Article."

SECTION 10.36.(b) G.S. 132-1.1 is amended by adding the following new subsection to read:

"(e) Controlled Substances Reporting System Information. – Information compiled or maintained in the Controlled Substances Reporting System established under Article 5D of Chapter 90 of the General Statutes is not a public record as defined in G.S. 132-1 and may be released only as provided under Article 5D of Chapter 90 of the General Statutes."

SECTION 10.36.(c) This section becomes effective January 1, 2006.

Appropriations Subcommittee on Health and Human Services

SENIOR CENTER OUTREACH

SECTION 10.37.(a) Funds appropriated to the Department of Health and Human Services, Division of Aging and Adult Services, for the 2005-2007 fiscal biennium, shall be used by the Division of Aging and Adult Services to enhance senior center programs as follows:

(1) To expand the outreach capacity of senior centers to reach unserved or underserved areas; or

(2) To provide start-up funds for new senior centers.

All of these funds shall be allocated by October 1 of each fiscal year.

SECTION 10.37.(b) Prior to funds being allocated pursuant to this section for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located shall:

(1) Formally endorse the need for such a center;

(2) Formally agree on the sponsoring agency for the center; and

(3) Make a formal commitment to use local funds to support the ongoing operation of the center.

SECTION 10.37.(c) State funding shall not exceed seventy-five percent (75%) of reimbursable costs.

STATE-COUNTY SPECIAL ASSISTANCE

SECTION 10.38.(a) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars ($1,231) per month per resident.

SECTION 10.38.(b) Effective October 1, 2005, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighteen dollars ($1,118) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

SECTION 10.38.(c) Effective October 1, 2005, the maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars ($1,515) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

SECTION 10.38.(d) It is the intent of the General Assembly to protect individuals who meet current eligibility standards for State-County Special Assistance

from becoming disenfranchised from the program as a result of any changes proposed in this section. Therefore, subject to any necessary approvals by the Center for Medicare & Medicaid Services (CMS), the eligibility of Special Assistance recipients who resided in adult care homes on September 30, 2003, and remain continuously eligible shall not be affected by an income reduction in the Special Assistance eligibility criteria, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand ninety-one dollars ($1,091) per month per resident.

SECTION 10.38.(e) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Service (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SPECIAL ASSISTANCE IN-HOME

SECTION 10.39.(a) The Department of Health and Human Services may use funds from the existing State-County Special Assistance for Adults budget to provide Special Assistance payments to eligible individuals in in-home living arrangements. These payments may be made for up to 1,000 individuals during the 2005-2006 fiscal year and the 2006-2007 fiscal year. The standard monthly payment to individuals enrolled in the Special Assistance in-home program shall be seventy-five percent (75%) of the monthly payment the individual would receive if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case

manager. For State fiscal year 2005-2006, qualified individuals shall not receive payments at rates less than they would have been eligible to receive in State fiscal year 2004-2005. The Department shall implement Special Assistance in-home eligibility policies and procedures to assure that in-home program participants are those individuals who need and, but for the in-home program, would seek placement in an adult care home facility. The Department's policies and procedures shall include the use of a functional assessment. The Department shall make this in-home option available to all counties on a voluntary basis. To the maximum extent possible, the Department shall consider geographic balance in the dispersion of payments to individuals across the State.

SECTION 10.39.(b) The Department shall report on or before January 1, 2006, and on or before January 1, 2007, to the cochairs of the House of Representatives Appropriations Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the cochairs of the Senate Appropriations Committee, and the cochairs of the Senate Appropriations Committee on Health and Human Services. This report shall include the following information:

(1) A description of cost savings that result from allowing individuals eligible for State-County Special Assistance the option of remaining in the home.
(2) A complete fiscal analysis of the in-home option to include all federal, State, and local funds expended.
(3) How much case management is needed and which types of individuals are most in need of case management.
(4) The geographic location of individuals receiving payments under this section.
(5) A description of the services purchased with these payments.
(6) A description of the income levels of individuals who receive payments under this section and the impact on the Medicaid program.
(7) Findings and recommendations as to the feasibility of continuing or expanding the in-home program.
(8) The level and quantity of services (including personal care services) provided to the demonstration project participants compared to the level and quantity of services for residents in adult care homes.

SECTION 10.39.(c) The Department shall incorporate data collection tools designed to compare quality of life among institutionalized versus noninstitutionalized populations (i.e., an individual's perception of his or her own health and well-being, years of healthy life, and activity limitations). To the extent national standards are available, the Department shall utilize those standards.

LICENSURE OF RESIDENTIAL TREATMENT FACILITIES

SECTION 10.40.(a) Article 2 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-23.1. Licensure of residential treatment facilities.**

The General Assembly finds:

(1) That much of the care for residential treatment facility residents is paid by the State and the counties;
(2) That the cost to the State for care for residents of residential treatment facilities is substantial, and high vacancy rates in residential treatment facilities further increase the cost of care;

(3) That the proliferation of residential treatment facilities results in costly duplication and underuse of facilities and may result in lower quality service;

(4) There is currently no ongoing relationship between some applicants for licensure and local management entities (LMEs) that are responsible for the placement of children and adults in residential treatment facilities; and

(5) That it is necessary to protect the general welfare and lives, health, and property of the people of the State for the local management entity (LME) to verify that additional beds are needed in the LME's catchment area before new residential treatment facilities are licensed. This process is established to ensure that unnecessary costs to the State do not result, residential treatment facility beds are available where needed, and that individuals who need care in residential treatment facilities may have access to quality care.

Based on these findings, the Department of Health and Human Services may license new residential treatment facilities if the applicant for licensure submits with the application a letter of support obtained from the local management entity in whose catchment area the facility will be located. The letter of support shall be submitted to the Department of Health and Human Services, Division of Facility Services and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall specify the number of existing beds in the same type of facility in the catchment area and the projected need for additional beds of the same type of facility. As used in this subsection, "residential treatment facility" means a "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate of Need requirements under Article 9 of Chapter 131E of the General Statutes.

SECTION 10.40.(b) This section applies to license applications pending and license applications submitted on and after the effective date of this act.

REGULATORY CHANGES TO IMPROVE QUALITY AND SAFETY IN HOME CARE SERVICES, MENTAL HEALTH FACILITIES, ADULT CARE HOMES, AND CERTAIN HOSPITAL FACILITIES

SECTION 10.40A.(a) G.S. 131E-140 reads as rewritten:

"§ **131E-140. Rules and enforcement.**

(a) The Commission ~~is authorized to~~ may adopt, amend and repeal all rules necessary for the implementation of this ~~Part.~~ Part and Part 3A of Article 6 of this Chapter. Provided, these rules shall not extend, modify, or limit the licensing of individual health professionals by their respective licensing boards; nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider. Rules authorized under this section include rules:

~~(a1) The Commission shall adopt rules that~~

(1) That recognize the different types of home care services and shall adopt specific requirements for the provision of each type of home care service.

(2) To establish staff qualifications, including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be either licensed or certified. The rules may establish minimum training and education qualifications for staff and may include the recognition of professional certification boards for

those professions not licensed or certified under other provisions of the North Carolina General Statutes provided that the professional board evaluates applicants on a basis that protects the public health, safety, or welfare.

(3) For the purpose of ensuring effective supervision of in-home aide staff and timely provision of services, the Commission shall adopt rules defining geographic service areas for in-home aide services and staffing qualifications for licensed home care agencies.

(4) Prohibiting licensed home care agencies from hiring individuals listed on the Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).

(5) Requiring applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home care ~~agencies.~~agencies and shall conduct an inspection of each agency at least every three years."

SECTION 10.40A.(b) G.S. 131E-141 reads as rewritten:

"§ **131E-141. Inspection.**

(a) The Department shall inspect home care agencies in accordance with rules adopted by the Commission to determine compliance with the provisions of this Part and the rules established by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been clients of the agency being inspected unless that client objects in writing to review of that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through an agency who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law; provided the client has not made written objection to this disclosure. The agency, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews, except as noted in G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed without written authorization of the client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning an agency without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, " 'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this section, the client must be advised in writing by the licensed agency that the client has the right to object in writing

to release of information or review of the client's records and that by an objection in writing the client may prohibit the inspection or release of the records.

(c) An agency must provide each client with a written notice of the Division of Facility Services hotline number in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services."

SECTION 10.40A.(c) G.S. 122C-21 reads as rewritten:

"§ **122C-21. Purpose.**

The purpose of this Article is to provide for licensure of facilities for the mentally ill, developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing:

(1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and

(2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals. The Department shall ensure that licensable facilities are inspected every two years to determine compliance with physical plant and life-safety requirements."

SECTION 10.40A.(d) G.S. 122C-23(e) reads as rewritten:

"(e) ~~Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue.~~Initial licenses issued under the authority of this section shall be valid for not more than 15 months. Licenses shall be renewed annually thereafter and shall expire at the end of the calendar year. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary. Licenses for facilities that have not served any clients during the previous 12 months are not eligible for renewal.

The Secretary may issue a provisional license for a period up to six months to a person obtaining the initial license for a facility. The licensee must demonstrate substantial compliance prior to being issued a full license.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule ~~or rules.~~when the noncompliance does not present an immediate threat to the health and safety of the individuals in the licensable facility. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. ~~The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility.~~ A provisional license for an additional period of time to meet the noncompliance may not be issued."

SECTION 10.40A.(e) G.S. 122C-24.1(a) reads as rewritten:

"§ **122C-24.1. Penalties; remedies.**

(a) Violations Classified. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious

physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and
c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) nor more than ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) for each Type A Violation in facilities or programs that serve ~~nine~~ six or fewer persons. The Department shall impose a civil penalty in an amount not less than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) nor more than ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) for each Type A Violation in facilities or programs that serve ~~10~~ seven or more persons.

(2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation."

SECTION 10.40A.(f) G.S. 122C-24.1(b) reads as rewritten:

"(b) Penalties for Failure to Correct Violations Within Time Specified. –

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to ~~five hundred dollars ($500.00)~~one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to ~~two hundred dollars ($200.00)~~four hundred dollars ($400.00) for each day that the deficiency continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) of this section when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months."

SECTION 10.40A.(g) G.S. 122C-25(a) reads as rewritten:

"§ **122C-25. Inspections; confidentiality.**

(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e. shall be inspected on an annual basis.

…."

SECTION 10.40A.(h) G.S. 122C-25 is amended by adding the following new subsection to read:

"§ **122C-25. Inspections; confidentiality.**

…

(d) All residential facilities, as defined in G.S. 122C-3(14)e., shall ensure that the Division of Facility Services complaint hotline number is posted conspicuously in a public place in the facility."

SECTION 10.40A.(i) G.S. 131D-2(b)(1) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter and rules adopted pursuant thereto, the Department shall issue a license for the balance of the calendar year. Licenses ~~issued~~ renewed under the authority of this section shall be valid for one year from the date of ~~issuance~~ renewal unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of one hundred twenty-five dollars ($125.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of one hundred seventy-five dollars ($175.00) plus a nonrefundable annual per-bed fee of six dollars and twenty-five cents ($6.25). A license shall not be renewed if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional

license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:
    1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
    2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
b. The Department finds that:
    1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
    2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 10.40A.(j) G.S. 131D-2(b)(1a) reads as rewritten:

"(1a) ~~In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit. The Department shall also keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section. The Department shall keep an up to date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section.~~ In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection:

a. The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. The Division of Facility Services shall inspect all adult care homes and adult care units in nursing homes on an annual basis, effective July 1, 2007, and thereafter. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.

b. The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Facility Services and to have the Division of Facility Services oversee this monitoring and perform any required follow-up inspection. The county departments of social services shall document in a written report all on-site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Facility Services written reports of each facility visit within 20 working days of the visit.

c. The Division of Facility Services shall conduct and document annual reviews of the county departments of social services' performance. When monitoring is not done timely or there is failure to identify or document noncompliance, the Department may intervene in the particular service in question. Department

intervention shall include one or more of the following activities:

1. Sending staff of the Department to the county departments of social services to provide technical assistance and to monitor the services being provided by the facility.
2. Advising county personnel as to appropriate policies and procedures.
3. Establishing a plan of action to correct county performance.

The Secretary may determine that the Department shall assume the county's regulatory responsibility for the county's adult care homes.

d. The county departments of social services' adult home specialists and their supervisors shall complete:

1. Eight hours of prebasic training within 60 days of employment;
2. Thirty-two hours of basic training within six months of employment;
3. Twenty-four hours of postbasic training within six months of the basic training program;
4. A minimum of eight hours of complaint investigation training within six months of employment; and
5. A minimum of 16 hours of statewide training annually by the Division of Facility Services.

e. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit.

f. The Department shall keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section."

SECTION 10.40A.(k) G.S. 131D-2 is amended by adding the following new subsection to read:

"(j) Adult care homes shall post the Division of Facility Services' complaint hotline number conspicuously in a public place in the facility."

SECTION 10.40A.(l) G.S. 131D-34 reads as rewritten:

"§ **131D-34. Penalties; remedies.**

(a) Violations Classified. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or

certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and
c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) nor more than ~~five thousand dollars ($5000)~~ ten thousand dollars ($10,000) for each Type A Violation in homes licensed for ~~nine~~ six or fewer beds. The Department shall impose a civil penalty in an amount not less than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) nor more than ~~ten thousand dollars ($10,000)~~twenty thousand dollars ($20,000) for each Type A Violation in facilities licensed for ~~10~~ seven or more beds.

(2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a ~~specific~~ reasonable time period to address the violation. The required plan cannot exceed requirements imposed by existing rule or law.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to ~~five hundred dollars ($500.00)~~one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to ~~two hundred dollars ($200.00)~~four hundred dollars ($400.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The

Department or its authorized representative shall ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the fact that death or serious physical harm to a resident has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;

(2a) Efforts by the licensee to correct violations;

(3) The number and type of previous violations committed by the licensee within the past 36 months;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;

(2) The local department of social services who is responsible for oversight of the facility involved;

(3) The licensee involved;

(4) The residents affected; and

(5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(d1) The Department shall impose a civil penalty on any applicant for licensure who provides false information or omits information on the portion of the licensure application requesting information on owners, administrators, principals, or affiliates of the facility. The amount of the penalty shall be as is prescribed for a Type A Violation.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

(1) The cost of training does not exceed one thousand dollars ($1,000);

(2) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and

(3) The training is:

a. Specific to the violation;

b. Approved by the Department of Health and Human Services; and

c. Taught by someone approved by the Department and other than the provider.

(h) The Secretary shall establish a penalty review committee within the Department, which shall meet at least semiannually to review violations and penalties imposed by the Adult Care Licensure Section; provide a forum for residents, guardians or families of residents, local department of social services, and providers; and make recommendations to the Department for changes in policy, training, or rules as a result of its review and publish a report.~~review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129 as follows:~~

(1) The Secretary ~~shall:~~ shall administer the work of the Committee and provide notice of its meetings to the following parties involved in the penalties the Committee will be reviewing:
   a. The licensed provider; ~~Administer the work of the committee;~~
   b. The local department of social services that is responsible for oversight of the facility involved; ~~Ensure provision of departmental staff review;~~
   c. The residents affected; and ~~Evaluate the local departments of social services and the Division of Facility Services' penalty recommendations;~~
   d. The families or guardians of the residents affected. ~~Ensure that recommendations by the Department are complete and submitted within 60 days of receipt of the initial recommendations from the local departments of social services or the Division of Facility Services; and~~
   ~~e.~~ ~~Provide written copies of all procedures to:~~
      ~~1. The penalty review committee;~~
      ~~2. The local department of social services who is responsible for oversight of the facility involved;~~
      ~~3. The licensee involved;~~
      ~~4. The residents affected; and~~
      ~~5. The families or guardians of the residents affected.~~

(2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:
   a. A licensed pharmacist;
   b. A registered nurse experienced in long term care;
   c. A representative of a nursing home;
   d. A representative of an adult care home; and
   e. Two public members. One shall be a "near" relative of a nursing home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. One shall be a "near" relative of a rest home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. For purposes of this subdivision, a "near" relative is a spouse, sibling, parent, child, grandparent, or grandchild.

(3) Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

~~(4) Prior to serving on the committee, each member shall complete a training program provided by the Department of Health and Human Services that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.~~

(4a) The Department of Health and Human Services shall notify families or guardians of affected residents of the right to request a penalty review committee review of the Department's penalty decision before the decision becomes final. Within 60 days of receipt of a request from a family member or guardian for review of the Department's penalty decision, the penalty review committee shall meet to conduct the review and shall inform the family member or guardian of the results of the review.

(5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee.

(6) The Committee shall be cochaired by:

a. One member of the Department outside of the Division of Facility Services; and

b. One member who is not affiliated with the Department.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 10.40A.(m) G.S. 131E-136 reads as rewritten:

"§ **131E-136. Definitions.**

As used in this Part, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(1a) "Geographic service area" means the geographic area in which a licensed agency provides home care services.

(2) "Home care agency" means a private or public organization that provides home care services.

(2a) "Home care agency director" means the person having administrative responsibility for the operation of the licensed agency site.

(2b) "Home care client" means an individual who receives home care services.

(3) "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;

b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;

c. Medical social services;

d. In-home aide services that involve hands-on care to an individual;

e. Infusion nursing services; and

f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health

departments, by employees of the Department of Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

(4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E."

SECTION 10.40A.(n) Article 6 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part 3A. Home Care Clients' Bill of Rights.

"**§ 131E-144.1. Legislative intent.**

It is the intent of the General Assembly to support an individual's desire to live at home and receive home care services.

"**§ 131E-144.2. Definitions.**

Unless otherwise specified, the definitions that are provided in Part 3 of Article 6 of this Chapter apply in this Part.

"**§ 131E-144.3. Declaration of home care clients' rights.**

Each client of a home care agency shall have the following rights:

(1) To be informed and participate in his or her plan of care.

(2) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.

(3) To receive care and services that are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.

(4) To voice grievances about care and not be subjected to discrimination or reprisal for doing so.

(5) To have his or her personal and medical records kept confidential and not be disclosed without appropriate written consent.

(6) To be free of mental and physical abuse, neglect, and exploitation.

(7) To receive a written statement of services provided by the agency and the charges the client is liable for paying.

(8) To be informed of the process for acceptance and continuance of service and eligibility determination.

(9) To accept or refuse services.

(10) To be informed of the agency's on-call service.

(11) To be informed of supervisory accessibility and availability.

(12) To be advised of the agency's procedures for discharge.

(13) To receive a reasonable response to his or her requests of the agency.

(14) To be notified within 10 days when the agency's license has been revoked, suspended, canceled, annulled, withdrawn, recalled, or amended.

(15) To be advised of the agency's policies regarding patient responsibilities.

"**§ 131E-144.4. Notice to client.**

(a) During the agency's initial evaluation visit or before furnishing services, a home care agency shall provide each client with the following:

(1) A copy of the declaration of home care clients' rights.

(2) A copy of the agency's policies regarding client responsibilities as it relates to safety and care plan compliance.

(3) The address and telephone number for information, questions, or complaints about services provided by the agency.

(4) The address and telephone number of the section of the Department of Health and Human Services responsible for the enforcement of the provisions of this Part.

(b) Receipts for the declaration of home care clients' rights and contact information required in this section shall be signed by the client and shall be retained in the agency's files.

"**§ 131E-144.5. Implementation.**

Responsibility for implementing the provisions of this Part shall rest with the home care agency director. Each agency shall provide appropriate training to implement this Part.

"**§ 131E-144.6. Enforcement and investigation.**

(a) The Department of Health and Human Services shall be responsible for enforcing the provisions of this Part. The Department shall investigate complaints made to it and reply within a reasonable period of time, not to exceed 60 days.

(a1) When the Department of Health and Human Services receives a complaint alleging a violation of the provisions of this Part pertaining to client care or client safety, the Department shall initiate an investigation as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.

(2) Within 24 hours if the complaint alleges abuse of a client as defined by G.S. 131D-20(1).

(3) Within 48 hours if the complaint alleges neglect of a client as defined by G.S. 131D-20(8).

(4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory and reporting requirements

for health care personnel pursuant to Article 15 of this Chapter, or for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

(b) A home care agency shall investigate, within 72 hours, complaints made to the agency by a home care client or the client's family and must document both the existence of the complaint and the resolution of the complaint.

"§ **131E-144.7. Confidentiality.**

(a) The Department of Health and Human Services may inspect home care clients' medical records maintained at the agency when necessary to investigate any alleged violation of this Part.

(b) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. A person who has filed a complaint shall have access to information about a complaint investigation involving a specific home care client if written authorization is obtained from the client or legal representative."

SECTION 10.40A.(o) G.S. 131E-140 is amended by adding the following new subsection to read:

"(a1) The Commission shall adopt rules defining the scope of permissible advertising and promotional practice by home care agencies."

SECTION 10.40A.(p) The Department's Division of Aging and Adult Services shall develop a Quality Improvement Consultation Program for Adult Care Homes. The purpose of the Program is to promote better care and improve quality of life in a safe environment for residents in adult care homes through consultation and assistance with adult care home providers. The county departments of social services shall be responsible for implementation of the Program with all adult care homes located in the respective county, based on a timetable for statewide implementation.

The Division of Aging and Adult Services shall consult with adult care home providers, county departments of social services, consumer advocates, and other interested stakeholders and parties in the development of the Quality Improvement Consultation Program for Adult Care Homes.

The Department shall submit a progress report to the North Carolina Study Commission on Aging and to the Senate Appropriations Committee on Health and Human Services and to the House of Representatives Subcommittee on Health and Human Services on or before April 1, 2006.

The report will address the following topics:

(1) Principles and philosophies that are resident-centered and promote independence, dignity, and choice for residents;

(2) Approaches to develop continuous quality improvement with a focus on resident satisfaction and optimal outcomes;

(3) Dissemination of best practice models that have been used successfully elsewhere;

(4) A determination of the availability of standardized instruments, and their use to the extent possible, to assess and measure adult care home performance according to quality of life indicators;

(5) Utilization of quality improvement plans for adult care homes that identify and resolve issues that adversely affect quality of care and services to residents. The plans include agreed upon time frames for completion of improvements and identification of needed resources;

(6) Training required to equip county departments of social services' staff to implement the Program;

(7) A distinction of roles between the regulatory role of the Department's Division of Facility Services and the quality improvement consultation and monitoring responsibilities of the county departments of social services; and

(8) Identification of staffing and other resources needed to implement the Program.

The Division of Aging and Adult Services shall conduct a pilot of the Quality Improvement Consultation Program for Adult Care Homes. No more than four county departments of social services shall participate in the pilot. The Division of Aging and Adult Services shall consider geographic balance and size in carrying out the pilot. At the conclusion of the pilot, the Division of Aging and Adult Services shall make recommendations regarding the effectiveness of the Quality Improvement Consultation Program for Adult Care Homes. If the Division recommends expansion of the pilot to other counties or statewide implementation of the Program, its report shall include the cost and a proposed timetable for implementing these recommendations, including the identification of any necessary statutory and administrative rule changes. The recommendations shall be made to the Secretary of the Department of Health and Human Services, the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services.

SECTION 10.40A.(q) The Department of Health and Human Services shall study whether there are any additional "health care facilities" and "health care personnel" that are employed in health care settings, including unlicensed health care settings, that should be contained in the Health Care Personnel Registry and listed in G.S. 131E-256. The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging by December 1, 2005.

SECTION 10.40A.(r) G.S. 122C-25 and G.S. 131D-2(b)(1), as amended in subsections (g), (h), and (i) of this section, become effective July 1, 2007, except that the Division may conduct inspections more frequently than annually prior to July 1, 2007, as funds and personnel permit. G.S. 131D-2(b)(1a)d., as enacted by subsection (j) of this section, becomes effective July 1, 2006. Adult home specialists and their supervisors employed on or before July 1, 2006, must complete the required training components or those portions of the training components they have not completed prior to the effective date within 12 months. The remainder of this section is effective when this act becomes law.

AUTHORIZATION FOR HEALTH CARE FACILITIES TO REMAIN IN OPERATION UNDER CERTAIN CIRCUMSTANCES

SECTION 10.40B.(a) Notwithstanding provisions to the contrary in Chapter 150B and Article 9 of Chapter 131E of the General Statutes, a licensed health care facility in operation on July 1, 2005, under a certificate of need issued by the Department of Health and Human Services prior to that date and subsequently invalidated based on a procedural defect in the awarding of the certificate of need, may remain in operation for the purpose of applying for a new certificate of need in accordance with Article 9 of Chapter 131E of the General Statutes. The health care facility may remain in operation for the period pending the decision of the Department on the application for the new certificate of need.

SECTION 10.40B.(b) This section expires 30 days from the date of the Department's decision on the new certificate of need or adjournment sine die of the 2005 General Assembly, whichever occurs later.

USE OF MEDICATION AIDES TO PERFORM TECHNICAL ASPECTS OF MEDICATION ADMINISTRATION IN SKILLED NURSING FACILITIES

SECTION 10.40C.(a) Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-114.2. Use of medication aides to perform technical aspects of medication administration.**

(a) Facilities licensed and medication administration services provided under this Part may utilize medication aides to perform the technical aspects of medication administration consistent with G.S. 90-171.20(7) and (8), and G.S. 90-171.43.

(1) A medication aide who is employed in a facility licensed under Article 5, Article 6, Part 1, and Article 10 of this Chapter shall be listed as a Nurse Aide I on the Nurse Aide I Registry in addition to being listed on the Medication Aide Registry.

(2) Medication administration as used in Article 5, Article 6, Part 1, and Article 10 of this Chapter shall not include intravenous or injectable medication services.

(b) The Commission shall adopt rules to implement this section. Rules adopted by the Commission shall include:

(1) Training and competency evaluation of medication aides as provided for under this section.

(2) Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-271.

(3) Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with this Part."

SECTION 10.40C.(b) Article 9C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-171.56. Medication aide requirements.**

The Board of Nursing shall do the following:

(1) Establish standards for faculty requirements for medication aide training; and

(2) Provide ongoing review and evaluation, and recommend changes, for faculty and medication aide training requirements to support safe medication administration and improve client, resident, and patient outcomes."

SECTION 10.40C.(c) Article 16 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-270. Medication Aide Registry.**

(a) The Department shall establish and maintain a Medication Aide Registry containing the names of all health care personnel in North Carolina who have successfully completed a medication aide training program that has been approved by the North Carolina Board of Nursing and passed a State-administered medication aide competency exam.

(b) Before allowing an individual to serve as a medication aide, an employer shall access the Medication Aide Registry to verify that the individual is listed on the

Registry and shall note each incidence of access in the appropriate business file. Employers may not use an individual as a medication aide unless the individual is listed on the Medication Aide Registry.

(c) Employers shall access the Health Care Personnel Registry prior to employing a medication aide. Any substantiated action as defined in G.S. 131E-256(a)(1) listed against the medication aide shall disqualify the medication aide from employment in any facility or agency covered by Part 1 of Article 6 of this Chapter."

SECTION 10.40C.(d) This section becomes effective July 1, 2006. The North Carolina Board of Nursing and the Department of Health and Human Services shall report on the implementation of this act to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006, and annually thereafter.

DHHS AND COMMUNITY COLLEGES STUDY USE OF MEDICATION AIDES TO PERFORM TECHNICAL ASPECTS OF MEDICATION ADMINISTRATION

SECTION 10.40D.(a) The Secretary of Health and Human Services and the President of the Community Colleges System shall jointly convene a study group to review and consider the use of medication aides to perform the technical aspects of medication administration. The study group shall consist of members representing at least the following entities and licensed health care facilities and providers:

(1) Appointed by the Secretary of Health and Human Services:
   a. Adult care homes.
   b. Home care agencies.
   c. Ambulatory surgical centers.
   d. Hospitals.
   e. Facilities providing mental health, developmental disabilities, and substance abuse services.
   f. Nursing homes.
   g. The nursing profession, as recommended by the Board of Nursing.
(2) Community colleges appointed by the President of the Community Colleges System.
(3) The Secretary of the Department of Correction.
(4) Others as may be appointed by the Secretary of Health and Human Services or the President of the Community Colleges System.

SECTION 10.40D.(b) The study group shall address at least the following in its study and its recommendations regarding medication aide performance of the technical aspects of medication administration:

(1) Training and competency evaluation of medication aides;
(2) Training standards;
(3) Ongoing review and evaluation of medication aide training; and
(4) Requirements for supervision of medication aides.

SECTION 10.40D.(c) The Secretary of Health and Human Services and the President of the Community Colleges System shall report the progress and recommendations of the study group to the 2006 Regular Session of the 2005 General Assembly upon its convening, and the 2007 General Assembly upon its convening.

Recommendations to the 2006 Regular Session of the 2005 General Assembly may include proposed legislation. A copy of the report shall be provided to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division at the same time as the report is submitted to the General Assembly.

SECTION 10.40D.(d) The Department of Health and Human Services shall continue its pilot program on the use of medication aides and shall report on the status of the pilot programs at the same time and to the same persons as the study group report to the General Assembly.

SECTION 10.40D.(f) G.S. 115C-47 is amended by adding the following new subdivision to read:

"§ **115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

…

(46) At the discretion of the board, to adopt policies and procedures authorizing schools that operate programs under G.S. 115C-307(c) to utilize unlicensed health care personnel to perform the technical aspects of medication administration to students. If adopted, the policies and procedures shall be consistent with the requirements of Article 9A of Chapter 90 of the General Statutes and shall include the following:

a. Training and competency evaluation of medication aides as provided for under G.S. 131E-270.

b. Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-271.

c. Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with Articles 5, 6, 10, and 16 of Chapter 131E of the General Statutes."

PLAN FOR STAR-RATING SYSTEM FOR ADULT CARE HOMES

SECTION 10.41. The Department of Health and Human Services shall develop a plan for implementing a star-rating system for adult care homes to improve quality of care. The Department shall report on the status and details of the plan, including a recommended time line for implementation, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than January 1, 2007.

SOCIAL SERVICES COMMISSION TECHNICAL CORRECTION

SECTION 10.42. G.S. 108A-14(a)(8) reads as rewritten:

"§ **108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

…

(8) To supervise adult care homes under the rules and regulations of the ~~Social Services~~Medical Care Commission;

…."

CHILD SUPPORT PROGRAM/ENHANCED STANDARDS

SECTION 10.43.(a) The Department of Health and Human Services shall develop and implement performance standards for each of the State and county child support enforcement offices across the State. To develop these performance standards, the Department of Health and Human Services shall evaluate other private and public child support models and national standards as well as other successful collections models. These performance standards shall include the following:

(1) Cost per collections.
(2) Consumer satisfaction.
(3) Paternity establishments.
(4) Administrative costs.
(5) Orders established.
(6) Collections on arrearages.
(7) Location of absent parents.
(8) Other related performance measures.

The Department of Health and Human Services shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department of Health and Human Services shall publish an annual performance report that shall include the statewide and local office performance of each child support office.

SECTION 10.43.(b) The Department of Health and Human Services shall report on its progress, in compliance with this section, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by May 1, 2006.

MULTIPLE RESPONSE SYSTEM

SECTION 10.45.(a) The Department of Health and Human Services, Division of Social Services, shall continue working with local departments of social services to implement a multiple response system of child protection. Local departments of social services shall continue systems already in place. The multiple response system shall provide a family-centered approach to child protective services in which local departments of social services use family assessment tools and family support principles when responding to selected reports of suspected child abuse, neglect, and dependency, including establishing a system of care with child and family teams.

SECTION 10.45.(b) The Department of Health and Human Services shall expand this project using both State appropriations and any non-State funding sources that can be identified for this purpose. Funds appropriated in this act to the Department for this purpose may be allocated to counties for multiple response system implementation, and counties may use these funds and other resources available for this purpose.

FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS

SECTION 10.46.(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

(1) $390.00 per child per month for children aged birth through 5;
(2) $440.00 per child per month for children aged 6 through 12; and

(3) $490.00 per child per month for children aged 13 through 18.

Of these amounts, fifteen dollars ($15.00) is a special needs allowance for the child.

SECTION 10.46.(b) The maximum rates for State participation in the adoption assistance program are established on a graduated scale as follows:

(1) $390.00 per child per month for children aged birth through 5;
(2) $440.00 per child per month for children aged 6 through 12; and
(3) $490.00 per child per month for children aged 13 through 18.

SECTION 10.46.(c) In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

SECTION 10.46.(d) The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

(1) $800.00 per child per month with indeterminate HIV status;
(2) $1,000 per child per month confirmed HIV-infected, asymptomatic;
(3) $1,200 per child per month confirmed HIV-infected, symptomatic; and
(4) $1,600 per child per month terminally ill with complex care needs.

CHILD CARING INSTITUTIONS

SECTION 10.47.(a) The Office of the State Auditor shall conduct an audit to evaluate overhead rates and reimbursements for child caring institutions receiving State funding. Of the funds appropriated to the Department of Health and Human Services, the sum of one hundred fifty thousand dollars ($150,000) shall be transferred to the State Auditor to conduct the audit. The audit shall include the following:

(1) A detailed evaluation of each child caring institution's cost allocation processes.
(2) A determination of whether the allocated costs are consistent in different agencies.
(3) A determination of the basis used for cost allocation by each agency.
(4) The methodology used to assign direct and indirect costs to specific child caring institution programs.
(5) A determination of whether the overhead charged is reasonable for that specific type of nonprofit, based on national surveys.
(6) A determination of how agency utilization rates impact the child caring institutions' cost allocation and subsequent State reimbursements.
(7) An examination of rate-setting methodologies used by other states and how North Carolina's payments to child caring institutions compare to other states.
(8) Recommendations on how to develop equitable, reasonable rates.
(9) An examination of the feasibility of providing child caring institutions with the opportunity to compete based on providing the best service at least cost.

The Office of the State Auditor shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research

Division no later than May 1, 2006. The written report shall include copies of working papers developed during the course of the audit.

SECTION 10.47.(b) The Department of Health and Human Services shall establish standardized rates for child caring institutions in this State. These rates shall be effective July 1, 2006, and shall be updated annually on July 1. Rate-setting recommendations provided by the Office of the State Auditor shall be incorporated into the Department of Social Services' rate-setting methodology.

SECTION 10.47.(c) Until standardized rates are set, child caring institutions' maximum reimbursement shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, counties shall include county and IV-E reimbursements.

SECTION 10.47.(d) Minimum reimbursement for foster parents providing services through child caring institutions shall not be lower than the rates established by the General Assembly.

SPECIAL CHILDREN ADOPTION FUND

SECTION 10.48.(a) Of the funds appropriated to the Department of Health and Human Services in this act, the sum of one hundred thousand dollars ($100,000) shall be used to support the Special Children Adoption Fund for the 2005-2006 fiscal year. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services. No local match shall be required as a condition for receipt of these funds. In accordance with State rules for allowable costs, the Special Children Adoption Fund may be used for post-adoption services for families whose income exceeds two hundred percent (200%) of the federal poverty level.

SECTION 10.48.(b) Of the total funds appropriated for the Special Children Adoption Fund each year, twenty percent (20%) of the total funds available shall be reserved for payment to participating private adoption agencies. If the funds reserved in this subsection for payments to private agencies have not been spent on or before March 31, 2006, the Division of Social Services may reallocate those funds, in accordance with this section, to other participating adoption agencies.

SECTION 10.48.(c) The Division of Social Services shall monitor the total expenditures in the Special Children Adoption Fund and redistribute unspent funds to ensure that the funds are used according to the guidelines established in subsection (a) of this section. The Division shall implement strategies to ensure that funds that have historically reverted for this program are used for the intended purpose. The Division shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the expenditures and activities of the program no later than December 1, 2005, and June 30, 2006.

STUDY TO IDENTIFY ADOPTION INCENTIVES FOR CHILDREN WHO ARE DIFFICULT TO PLACE

SECTION 10.49. The Department of Health and Human Services shall conduct a study to identify potential incentives for adoption of children who are difficult to place and the associated costs for each incentive. The study shall identify incentives currently in place in individual counties and the associated costs. The study shall identify funding sources available to support each incentive. The Department shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005.

LIMITATION ON STATE ABORTION FUND

SECTION 10.50. The limitations on funding of the performance of abortion established in Section 23.27 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.8A of Chapter 507 of the 1995 Session Laws, apply to the 2005-2006 and 2006-2007 fiscal years.

TANF BENEFIT IMPLEMENTATION

SECTION 10.51.(a) The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2005-2007", prepared by the Department of Health and Human Services and presented to the General Assembly as revised in accordance with subsection (b) of this section, except that the provision contained in the approved North Carolina Temporary Assistance for Needy Families State Plan FY 2005-2007 eliminating pay-after-performance as a benefit delivery method for two-parent families will only be implemented if the federal two-parent work participation rate is eliminated. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2005, through September 30, 2007. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2005 General Assembly.

SECTION 10.51.(b) The counties approved as Electing Counties in North Carolina's Temporary Assistance for Needy Families State Plan FY 2005-2007 as approved by this section are: Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, McDowell, Sampson, and Stokes.

SECTION 10.51.(c) Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2005 through 2007, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2005. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2005.

INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS

SECTION 10.51A.(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the

application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

SECTION 10.51A.(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

(1) An established follow-up system with a minimum of six months of follow-up services.
(2) Detailed information on the specific interventions applied including utilization indicators and performance measurement.
(3) Cost-benefit data.
(4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.
(5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.
(6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

SECTION 10.51A.(c) The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

SECTION 10.51A.(d) The Department shall report on the implementation of this section not later than February 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

RESIDENTIAL SCHOOLS REPORTING

SECTION 10.52. The Office of Education Services shall report not later than December 1, 2005, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the Eastern North Carolina School for the Deaf at Wilson, the North Carolina School for the Deaf at Morganton, and the Governor Morehead School for the Blind. The report shall include enrollment numbers at the schools, the budgets, and the academic status of the schools as defined under the ABCs program.

FUNDS FOR SCHOOL NURSES

SECTION 10.53.(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of two million five hundred thousand dollars ($2,500,000) for the 2005-2006 fiscal year, and the sum of two million five hundred thousand dollars ($2,500,000) for the 2006-2007 fiscal year shall be used for the school nurse funding initiative. The Department of Health and Human Services, Division of Public Health, in conjunction with the Department of Public Instruction, shall provide funds to communities to hire school nurses. The program will fund 50 permanent local nurses. The criteria shall include determining the areas in greatest need for school nurses with the greatest inability to pay for these nurses. Other criteria to be

considered shall include: (i) the current nurse-to-student ratio; (ii) the economic status of the community; and (iii) the health needs of area children.

There shall be no supplanting of local, State, or federal funds with these funds. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used for funding nurses for State agencies. All funding shall be used for direct services.

The Department of Health and Human Services shall report on the use of funds allocated under this section by December 1, 2005, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.53.(b) All school nurses funded with State funds appropriated in this act shall participate, as needed, in child and family teams established in this act.

EARLY INTERVENTION REPORTING AND EVALUATION

SECTION 10.54.(a) The Department of Health and Human Services, Division of Public Health, shall report on Early Intervention services. The report shall include the number of children served, the number and types of services and evaluations provided, and the budget for each Children's Developmental Services Agency. In addition, the Division of Public Health shall evaluate its Early Intervention Program provider network, including provider certification and continuing education requirements.

SECTION 10.54.(b) The Department of Health and Human Services shall analyze the reimbursement rates for Early Intervention services, and may adjust rates according to the findings of the analysis.

SECTION 10.54.(c) The Division of Public Health shall analyze the program funding for the Children with Special Needs Program and shall develop a plan to utilize these funds within the Early Intervention Program. The Division shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than December 1, 2005.

EARLY INTERVENTION PROGRAM RULES ADOPTED BY COMMISSION FOR HEALTH SERVICES

SECTION 10.54A. Part 1 of Article 5 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-126. Rule-making authority for birth – three-year-old early intervention program.**

The rule-making authority for the birth – three-year-old early intervention program through Part C of the Individuals with Disabilities Act (IDEA) is transferred from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to the Commission for Health Services."

CHRONIC DISEASE PREVENTION ACTIVITIES INVENTORY

SECTION 10.56. In order to reduce costs and eliminate duplication of effort, the Department of Health and Human Services shall create an inventory of all chronic disease prevention activities, funding, staffing, and other resources for these

activities, including funding and resources for related task forces and committees. The inventory shall include at a minimum, heart disease, stroke, diabetes, osteoporosis, and cancer. The Department shall create a plan to combine task forces and activities for chronic disease prevention and shall explore collapsing these task forces and committees into the Healthy Carolinians structure. The Department shall report on the inventory and the Department's recommendations not later than February 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

PILOT PROGRAM FOR AUTOMATIC EXTERNAL DEFIBRILLATORS IN PUBLIC BUILDINGS

SECTION 10.57.(a) The Department of Health and Human Services, Division of Public Health, shall develop a pilot program to place Automated External Defibrillators (AED) in public buildings, including public gymnasiums, that do not have an operational AED in place. In selecting pilot sites, the Department shall ensure geographic representation of the State.

SECTION 10.57.(b) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of seventeen thousand dollars ($17,000) for the 2005-2006 fiscal year, and the sum of six thousand dollars ($6,000) for the 2006-2007 fiscal year shall be used to purchase AED units, conduct on-site training at the pilot sites, and conduct ongoing education and awareness campaigns to the general public in the piloted sites. The Department shall ensure that training in the use of an AED shall be conducted in accordance with G.S. 90-21.15(b)(3). The Heart Disease and Stroke Prevention Branch of the Division of Public Health shall be responsible for the purchase of AEDs, the training of pilot program participants, and evaluation of the pilot program.

SECTION 10.57.(c) The Department of Health and Human Services shall report on the location, establishment, and implementation of the pilot sites to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

IMMUNIZATION PROGRAM FUNDING

SECTION 10.58.(a) Of the funds appropriated in this act to the Department of Health and Human Services for childhood immunization programs for positions, operating support, equipment, and pharmaceuticals, the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year may be used for projects and activities that are also designed to increase childhood immunization rates in North Carolina. These projects and activities shall include the following:

(1) Outreach efforts at the State and local levels to improve service delivery of vaccines. Outreach efforts may include educational seminars, media advertising, support services to parents to enable children to be transported to clinics, longer operating hours for clinics, and mobile vaccine units.

(2) Continued development of an automated immunization registry.

SECTION 10.58.(b) Funds authorized to be used for immunization efforts under subsection (a) of this section shall not be used to fund additional State positions in

the Department of Health and Human Services or contracts, except for contracts to develop an automated immunization registry or contracts with local health departments for outreach.

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.59.(a) For the 2005-2006 fiscal year and for the 2006-2007 fiscal year, HIV-positive individuals with incomes at or below one hundred twenty-five percent (125%) of the federal poverty level are eligible for participation in ADAP. Eligibility for participation in ADAP during the 2005-2007 fiscal biennium shall not be extended to individuals with incomes above one hundred twenty-five percent (125%) of the federal poverty level.

SECTION 10.59.(b) The Department of Health and Human Services shall make an interim report on ADAP program utilization by January 1, 2006, and a final report on ADAP program utilization by May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on ADAP. The reports shall include ADAP program utilization as follows:

(1) Monthly data on total cumulative AIDS/HIV cases reported in North Carolina.
(2) Monthly data on the number of individuals who have applied to participate in ADAP that have been determined to be ineligible.
(3) Monthly data on the income level of participants in ADAP and of individuals who have applied to participate in ADAP who have been determined to be ineligible.
(4) Monthly data on fiscal year-to-date expenditures of ADAP. The interim report shall contain monthly data on the calendar year-to-date expenditures of ADAP.
(5) An update on the status of the information management system.
(6) Monthly data on ADAP usage patterns and demographics of participants in ADAP.
(7) Fiscal year-to-date budget information.
(8) The status of the new system of management for ADAP, the costs savings realized from the new system, and recommendations for improving the system.

HEALTH INFORMATION SYSTEMS DEVELOPMENT FUNDS

SECTION 10.59A.(a) The sum of four million sixty-five thousand four hundred sixty-nine dollars ($4,065,469) is appropriated from Budget Code 24430, Fund Code 2117, to the Department of Health and Human Services, Division of Public Health, for the 2005-2006 fiscal year. These funds shall be used for the development and implementation of the Health Information Systems (HIS), an initiative that will provide an automated means of capturing, monitoring, reporting, and billing services provided in local health departments, CDSAs, and the State Public Health Lab. The HIS will allow for interfaces to local health departments' own vendor systems and is intended to replace the outdated Health Services Information System.

SECTION 10.59A.(b) The Department of Health and Human Services, Division of Public Health, shall report on the use of these funds to the House of Representatives Appropriations Subcommittee on Health and Human Services, the

Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

FUNDS FOR PILOT PROGRAM TO RECRUIT MINORITY STUDENTS INTO PHARMACY SCHOOLS

SECTION 10.59B. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of three hundred thousand dollars ($300,000) for the 2005-2006 fiscal year shall be used to develop a pilot program for the recruitment of minority students into pharmacy schools. The pilot program shall include all pharmacy schools willing to participate as well as community colleges with equipment and incentives for students that might be pharmacy school candidates. The Department shall report on the progress of the pilot program to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

HEALTH-RELATED INITIATIVES FUNDS

SECTION 10.59C. The sum of sixty-eight million dollars ($68,000,000) is appropriated from Budget Code 23460, Fund Code 2120, to the Health and Wellness Trust Fund for the 2005-2006 fiscal year for the purpose of health-related initiatives as approved by the Health and Wellness Trust Fund Commission, other projects allowed by G.S. 147-86.30, and line items allowed under G.S. 143-23.

COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.59E. Of funds appropriated in this act to the Department of Health and Human Services for the 2005-2006 fiscal year, the sum of two million dollars ($2,000,000) shall be allocated for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) to build capacity of faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to white persons. The areas of focus on health status shall be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths. These funds shall also be used to support one FTE in the Department of Health and Human Services to monitor, track, and evaluate grantees' progress in meeting performance-based standards and outcomes established by the Department.

GOVERNOR'S VISION CARE PROGRAM ESTABLISHED

SECTION 10.59F.(a) Program established. – There is established in the Department of Health and Human Services, Division of Public Health, the Governor's Vision Care Program. The purpose of the Program is to provide funds for early detection and correction of vision problems in children enrolled in grades K through 3 who are eligible for services under the Program. These funds shall be allocated to reimburse optometrists and ophthalmologists licensed to practice in this State for the comprehensive eye examination, including necessary spectacles, provided to meet the requirements of G.S. 130A-440.1.

SECTION 10.59F.(b) Eligibility. – Children eligible for services under this section shall be those with a family income not exceeding two hundred fifty percent (250%) of the federal poverty level, who do not have private health insurance coverage,

and are not eligible for services under NC Health Choice, Medicaid, the Department of Health and Human Services' Commission for the Blind programs, VSP's Sight for Students, or the Lions Club Foundation.

SECTION 10.59F.(c) For the purposes of this section, "comprehensive eye examination" means a complete and thorough examination of the eye and human visual system that includes an evaluation, determination, and diagnosis of:

(1) Visual acuity at distance and near;
(2) Alignment and ocular motility;
(3) Binocular fusion abnormalities, including tracking;
(4) Actual refractive errors, including verification by subject means;
(5) Any color vision disorder;
(6) Intraocular pressure as may be medically appropriate; and
(7) Ocular health, including internal and external assessment.

Routine screening that does not encompass all of the examination components listed in this subsection does not qualify for reimbursement from the Program.

SECTION 10.59F.(d) Article 3 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 34. Governor's Commission on Early Childhood Vision Care.

"**§ 143B-216.67. Governor's Commission on Early Childhood Vision Care.**

(a) There is established the Governor's Commission on Early Childhood Vision Care ("Commission"). The Commission shall be located in the Department of Health and Human Services for administrative and budgetary purposes only.

(b) The Commission shall consist of six members appointed as follows:

(1) Two optometrists and two ophthalmologists, each of whom is licensed to practice in this State, appointed by the Governor;
(2) One optometrist licensed to practice in this State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(3) One ophthalmologist licensed to practice in this State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The initial members appointed by the General Assembly shall each serve a one-year term. The initial members appointed by the Governor shall each serve a two-year term. Subsequent appointments shall be for three-year terms. Vacancies shall be filled by the original appointing authority.

(c) The Commission shall adopt rules to implement and administer the Governor's Vision Care Program established under this section. The rules shall address:

(1) Accepting and processing of applications by families for Program services.
(2) Verification of applicant income eligibility.
(3) Reimbursement to providers for services provided to eligible participants.
(4) Informing providers and the general public about the Program.
(5) Other duties necessary to implement the purposes and requirements of this section.

The Commission shall develop alternative ways for providing services to children who qualify for the Program when funding for Program services has been exhausted.

(d) Commission members who are officials or employees of the State or local government agencies shall be paid per diem, subsistence, and travel expenses in accordance with G.S. 138-6. All other Commission members shall be paid in accordance with G.S. 138-5.

(e) The Chair of the Commission shall be an ophthalmologist or optometrist appointed by the Governor to serve alternately from year to year. The Commission shall meet upon the call of the Chair. A majority of the Commission members shall constitute a quorum. The Department of Health and Human Services shall provide meeting space and staff to assist the Commission."

SECTION 10.59F.(e) Funds appropriated in this act to the Reserve for the Governor's Vision Care Program shall be used to reimburse providers for comprehensive eye examination services, including necessary spectacles, required under this section.

SECTION 10.59F.(f) Not later than May 1, 2006, the Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the implementation of this section. The report shall include the number of children who were exempt from the comprehensive eye examination requirement under G.S. 130A-440.1(a).

SECTION 10.59F.(g) Article 18 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-440.1. Comprehensive eye examination required.**

(a) Every child in this State entering kindergarten in the public schools shall obtain a comprehensive eye examination pursuant to the terms of this section not more than six months prior to the date of school entry.

(b) The comprehensive eye examination required under this section shall be conducted by an optometrist or ophthalmologist licensed to practice in this State. No child shall attend kindergarten unless a comprehensive eye examination transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the comprehensive eye examination required by this section, is presented to the school principal, except in cases where the child has moved to North Carolina within the 60 days immediately preceding school entry, in which case the child shall have 60 days from the date of school entry to submit the eye examination transmittal form required under this section. In the event a child is unable to obtain services after the 60-day period has elapsed, the principal shall report this information to the Commission so that the Commission may identify alternative ways to provide services to these children.

The comprehensive eye examination shall consist of a complete and thorough examination of the eye and human visual system that includes an evaluation, determination, and diagnosis of:

(1) Visual acuity at distance and near;
(2) Alignment and ocular motility;
(3) Binocular fusion abnormalities, including tracking;
(4) Actual refractive errors, including verification by subject means;
(5) Any color vision disorder;
(6) Intraocular pressure as may be medically appropriate; and
(7) Ocular health, including internal and external assessment.

Health assessment vision screening under G.S. 130A-440 does not meet the requirements of this section.

(c) The comprehensive eye examination transmittal form shall contain a summary of the comprehensive eye examination performed by the optometrist or ophthalmologist. Any treatment recommendations by the optometrist or ophthalmologist, such as spectacles for schoolwork, shall appear in the summary and school health card.

(d) This section shall not apply to children entering kindergarten in private church schools, schools of religious charter, or qualified nonpublic schools regulated by Article 39 of Chapter 115C of the General Statutes.

(e) G.S. 130A-441, 130A-442, and 130A-443, pertaining to health assessments, apply to comprehensive eye examinations required under this section."

SECTION 10.59F.(h) This section becomes effective beginning with the 2006-2007 school year.

LRC STUDY SCHOOL-BASED AND SCHOOL-LINKED HEALTH CENTERS

SECTION 10.59G.(a) The Legislative Research Commission may study and evaluate the number of school-based and school-linked health centers in providing primary care, mental health, and other health care services to determine the centers' impact on providing health care. In conducting the study, the Commission may consider the following:

(1) The health centers' role in contributing to the health and well-being of adolescents and in reducing the cost of health care.

(2) Adequacy of current funding and measures needed to sustain the centers as part of the overall school health strategy to improve the health of adolescents.

(3) The secured-care rate for students who have access to not only a school nurse but also to a school-based or school-linked health center and whether students receive care in a timely manner from appropriate health care providers.

(4) Other matters related to the efficacy and efficiency of school-based and school-linked health centers such that care provided enables students to remain in class, be productive and attentive while in class, and have fewer absences from school.

To assist in the study, the Commission may consult with such stakeholders as the North Carolina Association of School-Based and School-Linked Health Centers, the North Carolina Pediatric Society, the Adolescent Pregnancy Prevention Coalition of North Carolina, the Department of Health and Human Services, Division of Public Health, and other interested parties.

SECTION 10.59G.(b) The Legislative Research Commission may make an interim report, including proposed legislation, to the 2006 Regular Session of the 2005 General Assembly and shall make its final report to the 2007 General Assembly upon its convening.

SECTION 10.59G.(c) The Legislative Services Officer shall allocate funds appropriated in this act to the General Assembly for the expenditures of the Legislative Services Commission in conducting this study.

FUNDS FOR RURAL HOSPITAL OPERATIONS

SECTION 10.59H. Of the funds appropriated in this act to the Department of Health and Human Services, the sum of three million dollars ($3,000,000) for the 2005-2006 fiscal year shall be allocated to rural hospitals in need of

assistance with the operations of the hospital. The Department of Health and Human Services shall convene an advisory group to establish criteria for distribution of these funds. The criteria shall include the number of indigent patients served, the number of Medicaid recipients served, the per capita income of the area served by the hospital, and the financial needs of the hospital. The Department shall report on the allocation of these funds to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.60. No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving any State child care funds appropriated by this act unless federal law requires a match. This shall not prohibit any locality from spending local funds for child care services.

CHILD CARE ALLOCATION FORMULA

SECTION 10.61.(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

(1) Funds shall be allocated based upon the projected cost of serving children in a county under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.

(2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

SECTION 10.61.(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

SECTION 10.61.(c) Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty-two million dollars ($22,000,000) in federal block grant funds and State funds appropriated for fiscal years 2004-2005 and 2005-2006 for child care services. These funds shall be allocated to prevent termination of child care services.

CHILD CARE SUBSIDY RATES

SECTION 10.62.(a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

SECTION 10.62.(b) Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%

6 or more	8%.

SECTION 10.62.(c) Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

(1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower.

(2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower.

(3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.

(4) Maximum payment rates shall also be calculated periodically by the Division of Child Development for transportation to and from child care provided by the child care provider, individual transporter, or transportation agency, and for fees charged by providers to parents. These payment rates shall be based upon information collected by market rate surveys.

SECTION 10.62.(d) Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

(1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.

(2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

SECTION 10.62.(e) A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to unsubsidized privately paying parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

SECTION 10.62.(f) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those

specified in this subsection as a condition for reducing the provider's subsidized child care rate.

SECTION 10.62.(g) Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.62.(h) Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

(1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.
(2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.
(3) The child for whom a child care subsidy is sought is a citizen of the United States.

CHILD CARE REVOLVING LOAN

SECTION 10.63. Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.64.(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

SECTION 10.64.(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

(1) For amounts of five thousand dollars ($5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.
(2) For amounts greater than five thousand dollars ($5,000), but less than fifteen thousand dollars ($15,000), three written quotes.
(3) For amounts of fifteen thousand dollars ($15,000) or more, but less than forty thousand dollars ($40,000), a request for proposal process.
(4) For amounts of forty thousand dollars ($40,000) or more, a request for proposal process and advertising in a major newspaper.

SECTION 10.64.(c) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and

in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records.
(2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
(3) Not include expenses funded by State funds.
(4) Be supplemental to and not supplant preexisting resources for related program activities.
(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.
(6) Be otherwise allowable under federal or State law.
(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.
(8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

SECTION 10.64.(d) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

SECTION 10.64.(e) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2005-2006 and 2006-2007 shall be administered and distributed in the following manner:

(1) Capital expenditures are prohibited for fiscal years 2005-2006 and 2006-2007. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143-34.40.

(2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2005-2006 and 2006-2007.

SECTION 10.64.(f) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

SECTION 10.64.(g) For fiscal years 2005-2006 and 2006-2007, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars ($52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement.

SMART START FUNDING STUDY

SECTION 10.65.(a) The North Carolina Partnership for Children, Inc., shall study its allocation of funds to local partnerships. The North Carolina Partnership for Children, Inc., shall study funding equity among all counties and local partnerships based on population, the number of children from birth to five years of age residing in the county region, economic indicators, and the quality of existing child care. The North Carolina Partnership for Children, Inc., shall develop strategies to alleviate the inequity of funds to local partnerships.

SECTION 10.65.(b) The North Carolina Partnership for Children, Inc., shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

ANALYZE CHILD CARE SUBSIDY REIMBURSEMENT SYSTEM

SECTION 10.66.(a) The Department of Health and Human Services, Division of Child Development, shall conduct an analysis of the child care subsidy reimbursement system. The Division of Child Development shall conduct the analysis as follows:

(1) Compare surveyed rates from the 2005 child care market survey to existing reimbursement rates and identify counties and levels of disparity of current market rates to subsidy reimbursements.

(2) Compare overall compensation for child care workers by county and determine if there is a correlation with child care quality and subsidy reimbursements.

(3) Examine, by county, the prevalence of child care providers who charge parents a differential fee to make up the difference between private and subsidy reimbursement rates.

(4) Examine the impact:

a. That child care reimbursement rates have on providing families' access to all levels of child care; and

b. Of North Carolina Partnership for Children, Inc., funding on market rates and quality of child care by comparing the length of time local partnerships have been present in the counties, the amount local partnerships spend on child care quality initiatives, number of higher quality child care centers and homes, and the allocation to the county by percentage of need.

SECTION 10.66.(b) The Division of Child Development shall develop strategies to implement market rate equity among counties and submit a report of its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 30, 2006.

MORE AT FOUR

SECTION 10.67.(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of sixty-six million six hundred forty-six thousand six hundred fifty-three dollars ($66,646,653) for the 2005-2006 fiscal year and the sum of sixty-six million six hundred forty-six thousand six hundred fifty-three dollars ($66,646,653) for the 2006-2007 fiscal year shall be used to implement "More at Four", a voluntary prekindergarten program for at-risk four-year-olds.

SECTION 10.67.(b) The Department of Health and Human Services and the Department of Public Instruction, with guidance from the Task Force, shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

(1) A process and system for identifying children at risk of academic failure.

(2) A process and system for identifying children who are not being served first priority in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

(3) A curriculum or several curricula that are recommended by the Task Force. The Task Force will identify and approve appropriate research-based curricula. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

(4) An emphasis on ongoing family involvement with the prekindergarten program.

(5) Evaluation of child progress through preassessment and postassessment of children in the statewide evaluation, as well as ongoing assessment of the children by teachers.

(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services, the Department of Public Instruction, and the Task Force. The Department may use the child care rating system to assist in determining program participation.

(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

(10) A local contribution. Programs must demonstrate that they are accessing resources other than "More at Four".

(11) A system of accountability.

(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

SECTION 10.67.(c) The Department of Health and Human Services shall plan for expansion of the "More at Four" program within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The Department shall analyze guidelines for use of the "More at Four" funds, State subsidy funds, and Smart Start subsidy funds and devise a complementary plan for administration of funds for all four-year-old classrooms. The four- and five-star-rated centers that choose to become a "More at Four" program shall, at a minimum, receive curricula and access to training and workshops for "More at Four" programs and be considered along with other "More at Four" programs for T.E.A.C.H. funding. The Department shall ensure that no individual receives funding from more than one source for the same purpose or activity during the same funding period. For purposes of this subsection, sources shall include T.E.A.C.H., W.A.G.E.$., and T.E.A.C.H. Health Insurance programs for individual recipients.

The "More at Four" program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through December 30, 2005, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

SECTION 10.67.(d) The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall submit a report by February 1, 2006, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on

Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. This final report shall include the following:

(1) The number of children participating in the program.
(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
(3) The expected expenditures for the programs and the source of the local match for each grantee.
(4) The location of program sites and the corresponding number of children participating in the program at each site.
(5) Activities involving Child Find in counties.
(6) A comprehensive cost analysis of the program, including the cost per child served by the program.
(7) The plan for expansion of "More at Four" through existing resources as outlined in this section.

SECTION 10.67.(e) For the 2005-2006 and the 2006-2007 fiscal years, the "More at Four" program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income to make the program consistent with the child care subsidy requirements. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors.

SECTION 10.67.(f) The "More at Four" program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2003-2004 fiscal year.

SECTION 10.67.(g) The Department of Health and Human Services, Division of Child Development, shall review and evaluate the early literacy project in Davie County and consider incorporation of this curriculum into the "More at Four" program.

OFFICE OF SCHOOL READINESS

SECTION 10.68.(a) The Department of Health and Human Services, the Department of Public Instruction, and the Office of the Governor shall establish a study group to develop a plan for the creation of an Office of School Readiness. In conducting the study, the study group shall identify all State programs impacting children's readiness for school and the ways in which these State programs currently coordinate. The study shall include a survey of other states to determine organizational structures that exist to manage prekindergarten programs, child care licensure and regulation, and other early childhood-related programs. The study group shall also study the advantages or disadvantages of transferring the "More at Four" program to the Department of Public Instruction or the Department of Health and Human Services and any advantages or disadvantages the transfer may have on children being served by the "More at Four" program.

SECTION 10.68.(b) After conducting the study, the study group shall develop a recommendation for the structure of North Carolina's prekindergarten and other early childhood-related programs and develop a plan for the implementation of these recommendations.

SECTION 10.68.(c) Effective when this act becomes law, early childhood-related programs, including the "More at Four" program, Head Start program, and child care licensure and regulation, shall remain in their current departments until the General Assembly approves the plan.

SECTION 10.68.(d) The study group shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2006.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

PESTICIDE DISPOSAL PROGRAM

SECTION 11.1. G.S. 143-468(b) reads as rewritten:

"(b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:

(1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.

(2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.

(3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.

(4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services <u>for the costs of administering its pesticide disposal program, including the salaries and support of staff for the pesticide disposal program, and</u> for its environmental programs, as directed by the Board, including establishing a pesticide container management program to enhance its pesticide disposal program and its water quality initiatives."

TIMBER SALES RECEIPTS FOR CAPITAL IMPROVEMENTS AT AGRICULTURAL RESEARCH STATIONS AND FARMS

SECTION 11.2. The sum of one million thirty-three thousand one hundred dollars ($1,033,100) shall be transferred from the Department of Agriculture and Consumer Services' timber sales capital improvement account in the Department of Agriculture and Consumer Services as such funds become available during the 2005-2006 fiscal year, and used by the Department for the following capital improvements projects at agricultural research stations and research farms:

(1) $378,000 for improvements at the swine facility at the Cherry Research Farm.

(2) $285,500 for renovation of dairy facilities at the Cherry Research Farm.

(3) $369,600 for land acquisition and development at the Tidewater Research Station.

PLANT CONSERVATION PROGRAM FUNDS

SECTION 11.3. From funds received from the sale of timber that are deposited with the State Treasurer pursuant to G.S. 146-30 to the credit of the Department of Agriculture and Consumer Services in a capital improvement account, the sum of twenty thousand dollars ($20,000) shall be transferred to the Department of Agriculture and Consumer Services to be used by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, and environmental studies.

INCREASE FUNDS FOR NORTH CAROLINA GRAPE GROWERS COUNCIL

SECTION 11.4. G.S. 105-113.81A reads as rewritten:

"§ **105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of Agriculture and Consumer Services the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of Agriculture and Consumer Services under this section shall not exceed ~~three hundred fifty thousand dollars ($350,000)~~ five hundred thousand dollars ($500,000) per fiscal year. The Department of Agriculture and Consumer Services shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of Agriculture and Consumer Services under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

UNIFORM REGULATION OF ANIMAL SHELTERS

SECTION 11.5.(a) G.S. 19A-23 reads as rewritten:

"§ **19A-23. Definitions.**

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Adequate feed" means the provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foodstuff shall be served in a sanitized receptacle, dish, or container.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any domestic dog (Canis familiaris), or domestic cat (Felis domestica).

(5) "Animal shelter" means a facility which is used to house or contain seized, stray, homeless, quarantined, abandoned or unwanted animals and which is under contract with, owned, operated, or maintained by a county, city, town, or other municipality, or by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, ~~protection and~~ protection, rehabilitation, or humane treatment of animals.

(5a) "Boarding kennel" means a facility or establishment which regularly offers to the public the service of boarding dogs or cats or both for a fee. Such a facility or establishment may, in addition to providing shelter, food and water, offer grooming or other services for dogs and/or cats.

(6) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(7) "Dealer" means any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility; provided, however, that an individual who breeds and raises on his own premises no more than the offspring of five canine or feline females per year, unless bred and raised specifically for research purposes shall not be considered to be a dealer for the purposes of this Article.

(8) "Director" means the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services.

(9) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.

(10) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(11) "Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

(12) "Pet shop" means a person or establishment that acquires for the purposes of resale animals bred by others whether as owner, agent, or on consignment, and that sells, trades or offers to sell or trade such animals to the general public at retail or wholesale.

(13) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage compartment or hutch.

(14) "Public auction" means any place or location where dogs or cats are sold at auction to the highest bidder regardless of whether such dogs or cats are offered as individuals, as a group, or by weight.

(15) "Research facility" means any place, laboratory, or institution at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

(16) "Sanitize" means to make physically clean and to remove and destroy to a practical minimum, agents injurious to health."

SECTION 11.5.(b) G.S. 19A-24 reads as rewritten:

"§ **19A-24. Powers of Board of Agriculture.**

The Board of Agriculture ~~may:~~shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person licensed under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process."

SECTION 11.5.(c) Chapter 19A of the General Statutes is amended by adding a new section to read:

"§ **19A-41. Legal representation by the Attorney General.**

It shall be the duty of the Attorney General to represent the Commissioner of Agriculture and the Department of Agriculture and Consumer Services, or to designate some member of his staff to represent the Commissioner and the Department, in all actions or proceedings in connection with this Article."

SECTION 11.5.(d) This section becomes effective October 1, 2005.

PART XII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

STATE MATCH FOR FEDERAL SAFE DRINKING WATER ACT FUNDS

SECTION 12.1. Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to one million five hundred thousand dollars ($1,500,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal

Safe Drinking Water Act amendments of 1996 for the 2005-2006 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5.

EXPAND EXPRESS REVIEW PROGRAM STATEWIDE

SECTION 12.2.(a) Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding two new sections to read:

"§ **143B-279.13. Express permit and certification reviews.**

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

(1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.

(2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.

(3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.

(4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.

(5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars ($5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars ($4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars ($4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars ($4,000), plus one hundred fifty percent (150%) of the fee that would otherwise

apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) No later than March 1 of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the program under this section and any other findings or recommendations, including any legislative proposals that it deems pertinent.

"**§ 143B-279.14. Express Review Fund.**

The Express Review Fund is created as a special nonreverting fund. All fees collected under G.S. 143B-279.13 shall be credited to the Express Review Fund. The Express Review Fund shall be used for the costs of implementing the express review program under G.S. 143B-279.13 and the costs of administering the program, including the salaries and support of the program's staff. If the express review program is abolished, the funds in the Express Review Fund shall be credited to the General Fund."

SECTION 12.2.(b) The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program.

SECTION 12.2.(c) The Department of Environment and Natural Resources shall establish and support 12 additional positions to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to seven hundred thirty-six thousand six hundred twenty-nine dollars ($736,629) for the 2005-2006 fiscal year and up to six hundred seventy-one thousand four hundred nine dollars ($671,409) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to establish and support these 12 positions.

SECTION 12.2.(d) The Department of Environment and Natural Resources shall continue and support the four positions established under Section 12.9(c) of S.L. 2004-124 to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2005-2006 fiscal year and up to two hundred twenty-three thousand eight hundred three dollars ($223,803) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to continue and support these four positions.

SEDIMENTATION EDUCATION FUNDS

SECTION 12.3. The Department of Environment and Natural Resources shall use the funds appropriated in this act to the Department of Environment and Natural Resources for the 2005-2006 fiscal year and for the 2006-2007 fiscal year for sedimentation education for only the following:

(1) Sedimentation education activities that provide technical assistance to local erosion and sedimentation control programs under G.S. 113A-60; or

(2) Sedimentation education to professionals involved in developing erosion and sedimentation control plans for which prior approval is required under Article 4 of Chapter 113A of the General Statutes.

FUNDS TO IMPLEMENT FISHING LICENSE REQUIREMENTS LEGISLATION/CONTINGENT REPEAL OF SALTWATER FISHING LICENSE REQUIREMENT

SECTION 12.4.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement Senate Bill 1126 (Amend Fishing License Requirements-2) or House Bill 1092 (Amend Fishing License Requirements) if either bill becomes law no later than 30 days after adjournment of the 2005 Regular Session.

SECTION 12.4.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

SECTION 12.4.(c) Sections 1 through 4 and Sections 6 through 12 of S.L. 2004-187 and Section 12.16 of S.L. 2004-124 are repealed unless Senate Bill 1126 (Amend Fishing License Requirements-2) or House Bill 1092 (Amend Fishing License Requirements) becomes law no later than 30 days after the adjournment in 2005 of the 2005 Regular Session under a joint resolution.

REPORT ON NATURAL HERITAGE PROGRAM

SECTION 12.4A. No later than March 1, 2006, the Department of Environment and Natural Resources shall report to the General Assembly and to the Fiscal Research Division on the Natural Heritage Program under Article 9A of Chapter 113A of the General Statutes. The report shall include an explanation of the duties and activities of each position that serves as staff to the Program, a summary of what has been accomplished under the Program each fiscal year since its inception, and justification for continuing the Program at its current staff level.

GRASSROOTS SCIENCE PROGRAM

SECTION 12.5.(a) Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million one hundred ninety-seven thousand seven hundred sixty-two dollars ($3,197,762) for the 2005-2006 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2005-2006
Aurora Fossil Museum	$59,057
Cape Fear Museum	$161,007
Carolina Raptor Center	$112,174
Catawba Science Center	$133,429
Colburn Gem and Mineral Museum, Inc.	$74,545
Discovery Place	$662,865
Eastern NC Regional Science Center	$50,000
Elizabeth City Science Center	$50,000

Fascinate-U	$80,742
Granville County Museum Commission, Inc.–Harris Gallery	$56,422
Greensboro Children's Museum	$135,076
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$134,499
Highlands Nature Center	$79,268
Imagination Station	$86,034
Kidsenses	$50,000
Museum of Coastal Carolina	$74,192
Natural Science Center of Greensboro	$186,354
North Carolina Museum of Life and Science	$379,826
Rocky Mount Children's Museum	$72,254
Schiele Museum of Natural History	$229,547
Sci Works Science Center and Environmental Park of Forsyth County	$146,499
Western North Carolina Nature Center	$112,879
Wilmington Children's Museum	$71,093
Total	$3,197,762

SECTION 12.5.(b) No later than March 1, 2006, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

(1) The operating budget for the 2004-2005 fiscal year.

(2) The operating budget for the 2005-2006 fiscal year.

(3) The total attendance at the museum during the 2005 calendar year.

NEW LEASE PURCHASE/INSTALLMENT CONTRACTS FOR FORESTRY EQUIPMENT FOR DIVISION OF FOREST RESOURCES

SECTION 12.6. Prior to the Division of Forest Resources of the Department of Environment and Natural Resources entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment, the Division of Forest Resources shall consult with the Joint Legislative Commission on Governmental Operations. Prior to the Department of Administration entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment on behalf of the Division of Forest Resources, the Department of Administration shall consult with the Joint Legislative Commission on Governmental Operations.

EXTEND AND EXPAND PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS

SECTION 12.7.(a) Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, and Section 6.1 of S.L. 2003-340, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2005,~~ 2007, regarding the annual inspections of animal operations that are

subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County and Pender County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these ~~three~~ four counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these ~~three~~ four counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the ~~three~~ four counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

SECTION 12.7.(b) Section 3.3 of S.L. 1999-329, as amended by Section 6 of S.L. 2001-254, Section 1.2 of S.L. 2002-176, and Section 6.2 of S.L. 2003-340, reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit semiannual interim reports no later than 15 April and 15 October of each year beginning 15 October 1999 ~~and shall submit a final report no later than 15 October 2005~~ to the Environmental Review ~~Commission and to~~Commission, the Fiscal Research ~~Division.~~Division, and the Appropriations Subcommittees on Natural and Economic Resources in both the Senate and the House of Representatives. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. 143-215.10F and the resources that would be required to expand the pilot program to all counties. ~~The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals.~~"

SECTION 12.7.(c) No later than October 15, 2005, the Department of Environment and Natural Resources shall recommend to the Environmental Review Commission and the General Assembly whether to continue or expand the pilot program under this section. The Environmental Review Commission shall recommend to the 2006 Session of the General Assembly whether to continue or expand the pilot program under this section and may make any related legislative proposals.

BEAVER DAMAGE CONTROL PROGRAM FUNDS

SECTION 12.8. Of the funds appropriated in this act to the Department of Environment and Natural Resources, the sum of three hundred forty-nine thousand dollars ($349,000) for the 2005-2006 fiscal year and the sum of three hundred forty-nine thousand dollars ($349,000) for the 2006-2007 fiscal year shall be allocated to the Wildlife Resources Commission to be used to provide the State share necessary to support the beaver damage control program established in G.S. 113-291.10, provided the sum of at least twenty-five thousand dollars ($25,000) in federal funds is available each fiscal year of the biennium to provide the federal share.

MONITORING AND EMERGENCY CLEANUP FUNDS FOR TEXFI SITE CONTAMINATION

SECTION 12.9. Of the funds appropriated to the Department of Environment and Natural Resources, Division of Waste Management, for the 2005-2006 fiscal year to cost share federal funds for the cleanup of Superfund sites, up to fifty thousand dollars ($50,000) may be used by the Department of Environment and Natural Resources, Division of Waste Management, for the 2005-2006 fiscal year for monitoring the groundwater and other contamination located at the Texfi site in Fayetteville and for any emergency cleanup activities needed at this site.

USE OF NORTH CAROLINA AQUARIUMS FUND FOR DEBT SERVICE OF AQUARIUM EXPANSIONS

SECTION 12.10. G.S. 143B-289.44(b) reads as rewritten:

"(b) Fund. – The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used for repair, renovation, expansion, maintenance, educational exhibit construction, and operational expenses at existing ~~aquariums~~ aquariums, to pay the debt service and lease payments related to the financing of expansions of aquariums, including other relevant satellite areas, and to match private funds that are raised for these purposes."

PART XIII. DEPARTMENT OF COMMERCE

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 13.1.(a) Funds appropriated to the Department of Commerce for the 2004-2005 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of June 30, 2005, shall not revert to the General Fund on June 30, 2005, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes.

SECTION 13.1.(b) Funds appropriated to the Department of Commerce for the 2004-2005 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2005, shall not revert to the General Fund on June 30, 2005.

SECTION 13.1.(c) This section becomes effective June 30, 2005.

COUNCIL OF GOVERNMENT FUNDS

SECTION 13.2.(a) Of the funds appropriated in this act to the Department of Commerce, eight hundred thirty-two thousand one hundred fifty dollars

($832,150) for the 2005-2006 fiscal year and eight hundred thirty-two thousand one hundred fifty dollars ($832,150) for the 2006-2007 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to forty-eight thousand nine hundred fifty dollars ($48,950) for the 2005-2006 and the 2006-2007 fiscal years.

SECTION 13.2.(b) A regional council of government may use funds appropriated by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

SECTION 13.2.(c) Funds appropriated by this section shall be paid by electronic transfer in two equal installments, the first no later than September 1, 2005, and the second subsequent to acceptable submission of the annual report due to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006, as specified in subdivision (e)(2) of this section.

SECTION 13.2.(d) Funds appropriated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

SECTION 13.2.(e) Each council of government or lead regional organization shall do the following:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
   b. State fiscal year 2005-2006 itemized expenditures and fund sources;
   c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
   d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

TOURISM PROMOTION GRANTS

SECTION 13.3.(a) Tourism promotion funds appropriated to the Department of Commerce shall be allocated to counties based on need. Determination of counties that are most in need of State assistance shall be made in accordance with the existing State tier formula provided in G.S. 105-129.3.

SECTION 13.3.(b) Funds appropriated in this act to the Department of Commerce for tourism promotion grants shall be allocated according to the economic development tier assigned by the Department of Commerce in the following manner:

(1) Eligible organizations in counties with a Tier 1 or 2 designation are each eligible to receive a maximum grant of seven thousand five hundred dollars ($7,500) for each fiscal year, provided these funds are matched on the basis of one non-State dollar ($1.00) for every four State dollars ($4.00).

(2) Eligible organizations in counties with a Tier 3 or 4 designation are each eligible to receive a maximum grant of three thousand five hundred dollars ($3,500) for two of the next three fiscal years, provided these funds are matched on the basis of one non-State dollar ($1.00) for every three State dollars ($3.00).

(3) Eligible organizations in counties with a Tier 5 designation are each eligible to receive a maximum grant of three thousand five hundred dollars ($3,500) in alternating fiscal years provided these funds are matched on the basis of two non-State dollars ($2.00) for every one State dollar ($1.00).

SECTION 13.3.(c) An eligible organization that applies for but does not receive tourism promotion grant funds may apply for and be awarded funds in the following fiscal year. The fact that one or more eligible organizations in a county are awarded tourism promotion grant funds in a given fiscal year shall not bar other eligible organizations in that county from applying for and being awarded funds in the next fiscal year.

EMPLOYMENT SECURITY FUNDS

SECTION 13.4.(a) Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve shall not exceed the total administrative costs paid in fiscal year 2004-2005.

SECTION 13.4.(b) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of six million three hundred thousand dollars ($6,300,000) for the 2005-2006 fiscal year to be used for the following purposes:

(1) Six million dollars ($6,000,000) for the operation and support of local offices.

(2) Two hundred thousand dollars ($200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.

(3) One hundred thousand dollars ($100,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

TRADE JOBS FOR SUCCESS REPORTING

SECTION 13.4A.(a) In addition to the statutory reporting requirements pursuant to G.S. 143B-438.17, the Employment Security Commission, Department of Commerce, and the Community Colleges System Office shall make a joint written progress report on their compliance with Section 13.7A of S.L. 2004-124, as to the following:

(1) The actions taken to obtain from the U.S. Department of Labor as quickly as possible a waiver under the Trade Adjustment Act to allow the Trade Jobs for Success initiative to (i) serve persons regardless of their age, (ii) use unemployment funds to provide direct monetary incentives to participating employers and direct income to eligible workers in the retraining program, and (iii) use funds for in-State relocation assistance.

(2) Whether waivers have been sought for other program components.

(3) The progress made in implementing the Trade Jobs for Success initiative in the counties hardest hit by trade-impacted job losses, particularly the counties having an unemployment rate of eight percent (8%) and the extent to which these counties have received priority consideration.

(4) The efforts of the Department of Commerce seeking and receiving private grants and federal funds for the Trade Jobs for Success initiative.

(5) Any reasons why legislative mandates have not been followed or the statutory goals have not been achieved.

The progress report shall be submitted to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and the House of Representatives by August 1, 2005.

SECTION 13.4A.(b) G.S. 143B-438.17 reads as rewritten:

"§ **143B-438.17. Reporting.**

(a) Beginning July 1, 2005, ~~The~~ the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a ~~quarterly~~ monthly written report on the Trade Jobs for Success (TJS) initiative. The monthly report shall provide information on the commitment, disbursement, and use of funds and the status of any grant proposals or waivers requested on behalf of the Trade Jobs for Success initiative. The monthly report shall be submitted to the Governor and to the Fiscal Research Division of the General Assembly.

(b) Beginning October 1, 2005, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a quarterly written report on the Trade Jobs for Success initiative. The quarterly report shall ~~also~~ include legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the quarterly report shall be provided to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of

Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly.

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

INDUSTRIAL DEVELOPMENT FUND

SECTION 13.5. G.S. 143B-437.01 reads as rewritten:

"§ **143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

…

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, ~~or~~ electrical utility distribution lines or ~~equipment~~equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, ~~or~~ electrical utility lines or ~~facilities~~facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

…

(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one, two, and three areas, as defined in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, ~~or~~ electrical utility distribution lines or ~~equipment~~equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, ~~or~~ electrical utility lines or ~~facilities~~facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site,

shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

…."

ONE NORTH CAROLINA FUND

SECTION 13.6.(a) Of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs in the 2005-2006 fiscal year.

SECTION 13.6.(b) Notwithstanding the provisions of G.S. 143B-437.71, of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce shall allocate one million dollars ($1,000,000) for the 2005-2006 fiscal year to Johnson and Wales University in Charlotte for the purpose of providing financial assistance to the University.

STUDY ALTERNATE FUNDING OF INDUSTRIAL COMMISSION

SECTION 13.6A. The Department of Commerce and the Industrial Commission shall jointly conduct a study to determine the feasibility of terminating General Fund support for the Industrial Commission and providing for the costs of the Commission's operations and personnel by increasing the Commission's existing fees or establishing new fees. The Department and Commission shall report the results of its study and make recommendations for alternate ways of funding the Commission to the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Office of State Budget and Management, and the Fiscal Research Division no later than April 1, 2006.

ROANOKE RAPIDS MUSIC/ENTERTAINMENT COMPLEX

SECTION 13.6B. There is appropriated from the General Fund to the Department of Commerce the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year to be allocated to the Roanoke Rapids Entertainment District for the construction of a music and entertainment complex in Roanoke Rapids. The Department of Commerce shall not release funds appropriated in this section until the Office of State Budget and Management has determined that the Roanoke Rapids Entertainment District has entered into the contracts necessary for the successful completion of the complex. Beginning September 1, 2005, and quarterly thereafter, the Roanoke Rapids Entertainment District shall report its progress in completing the complex and the total funds received to date to the Office of State Budget and Management, the Department of Commerce, and the Fiscal Research Division.

REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS/VISION PLANS

SECTION 13.6C. There is appropriated from the General Fund to the Department of Commerce the sum of one million seven hundred fifty thousand dollars ($1,750,000) for the 2005-2006 fiscal year to be allocated to the seven regional economic development commissions. Of these funds, each regional economic development commission shall receive two hundred fifty thousand dollars ($250,000). These funds shall be used by each commission to develop and implement a strategic economic development plan as provided in Section 13.6 of S.L. 2004-124.

REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS

SECTION 13.7.(a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following Commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, Global TransPark Development Commission, and Carolinas Partnership, Inc.

SECTION 13.7.(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each Regional Economic Development Commission as follows:

(1) First, the Department shall establish each Commission's allocation by determining the sum of allocations to each county that is a member of that Commission. Each county's allocation shall be determined by dividing the county's enterprise factor by the sum of the enterprise factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "enterprise factor" means a county's enterprise factor as calculated under G.S. 105-129.3; and

(2) Next, the Department shall subtract from funds allocated to the Global TransPark Development Commission the sum of one hundred eighteen thousand one hundred twenty-nine dollars ($118,129) in the 2005-2006 fiscal year and one hundred eighteen thousand four hundred seventy-seven dollars ($118,477) in the 2006-2007 fiscal year, which sum represents the interest earnings in each fiscal year on the estimated balance of seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of one hundred eighteen thousand one hundred twenty-nine dollars ($118,129) in the 2005-2006 fiscal year and one hundred eighteen thousand four hundred seventy-seven dollars ($118,477) in the 2006-2007 fiscal year to the seven Regional Economic Development Commissions named in subsection (a) of this section. Each Commission's share of this redistribution shall be determined according to the enterprise factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each Commission's allocation determined under subdivision (1) of this subsection.

REGIONAL ECONOMIC DEVELOPMENT COMMISSION REPORTS

SECTION 13.8.(a) By February 15 of each fiscal year, the seven regional economic development commissions shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

(1) The preceding fiscal year's program activities, objectives, and accomplishments.

(2) The preceding fiscal year's itemized expenditures and fund sources.

(3) Demonstration of how the commission's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.

(4) To the extent they are involved in promotion activities such as trade shows, visits to prospects and consultants, advertising and media placement, the commissions shall demonstrate how they have generated qualified leads.

SECTION 13.8.(b) Each of the commissions shall provide to the Fiscal Research Division a copy of their annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.8.(c) The reporting requirements for regional economic development commissions, as provided in subsection (a) of this section, shall be reviewed annually by the North Carolina Partnership for Economic Development, and recommendations for changes to the reporting requirements shall be made to the Fiscal Research Division, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

SECTION 13.8.(d) Regional economic development commissions shall receive quarterly allocations of the funds appropriated in this act to the Department of Commerce for regional economic development commissions.

SECTION 13.8.(e) Regional economic development commissions shall remain in the Department of Commerce's Budget Code 14601 with other State-aided nonprofit entities.

ADVANCED VEHICLE RESEARCH CENTER/RESERVE FUNDS

SECTION 13.8A.(a) There is established in the Office of the State Budget and Management a reserve to be known as the Advanced Vehicle Research Center Reserve. Funds from the Reserve shall not be expended or transferred except in accordance with the provisions of this section.

SECTION 13.8A.(b) Of the funds appropriated by this act to the Advanced Vehicle Research Center Reserve, the Office of State Budget and Management may transfer in up to four installments the sum of seven million five hundred thousand dollars ($7,500,000) for the 2005-2006 fiscal year to the Department of Commerce to be allocated to the Advanced Vehicle Research Center of North Carolina, Inc., (Center) when the Office of State Budget and Management, in consultation with the Department of Commerce, determines the Center has completed goals and projects consistent with the Center's business plan. The goals and projects shall include the following:

(1) The Center has obtained legal title to the property on which the Advanced Vehicle Research Center will be built**.**

(2) The Center has determined and provided for the critical infrastructure needed to support the Advanced Vehicle Research Center.

(3) The Center has entered into a contract for the use and operation of a testing facility that will create new private sector jobs in Tier 1 or Tier 2 counties.

SECTION 13.8A.(c) The Center shall file with the Office of State Budget and Management and the Department of Commerce a copy of the Center's policy addressing conflicts of interest that may arise involving the Center's management employees and the members of its board of directors or other governing body before funds may be allocated to the Center. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Center's employees

or members of the board or other governing body, from the Center's disbursing of State funds, and shall include actions to be taken by the entity or the individual, or both, to avoid conflicts of interest and the appearance of impropriety.

SECTION 13.8A.(d) By December 31, 2005, and April 30, 2006, the Center shall report to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division the following information: (i) fiscal year 2005-2006 projects, objectives, and accomplishments; and (ii) fiscal year 2005-2006 itemized expenditures and fund sources. The April 30, 2006, report shall also contain the following: (i) fiscal year 2006-2007 planned projects, objectives, and accomplishments; and (ii) fiscal year 2006-2007 estimated expenditures and fund sources.

SECTION 13.8A.(e) The Center shall provide to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division: (i) a copy of the Center's annual audited financial statement within 30 days of issuance of the statement; and (ii) a copy of the Center's IRS Form 990.

SECTION 13.8A.(f) The Center shall provide a report containing detailed budget information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests. Specific salary information will be provided upon written request by the Chairmen of the Joint Legislative Commission on Governmental Operations or the Chairmen of the House Appropriations Committee on Environment, Health, and Natural Resources and the Chairman of the Senate Appropriations Committee on Natural and Economic Resources.

NONPROFIT REPORTING REQUIREMENTS

SECTION 13.9.(a) The N.C. Institute for Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., Coalition of Farm and Rural Families, and Partnership for the Sounds, Inc., shall do the following:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;

b. State fiscal year 2005-2006 itemized expenditures and fund sources;
c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments including actual results through December 31, 2006; and
d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.9.(b) No funds appropriated under this act shall be released to a nonprofit organization listed in subsection (a) of this section until the organization has satisfied the reporting requirement for January 15, 2005. Fourth quarter allotments shall not be released to any nonprofit organization that does not satisfy the reporting requirements by January 15, 2006, or January 15, 2007.

BIOTECHNOLOGY CENTER

SECTION 13.10.(a) The North Carolina Biotechnology Center shall recapture funds spent in support of successful research and development efforts in the for-profit private sector.

SECTION 13.10.(b) The North Carolina Biotechnology Center shall provide funding for biotechnology, biomedical, and related bioscience applications under its Business and Science Technology Programs.

SECTION 13.10.(c) The North Carolina Biotechnology Center shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
b. State fiscal year 2004-2005 itemized expenditures and fund sources;
c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
b. State fiscal year 2005-2006 itemized expenditures and fund sources;
c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and

d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.10.(d) The North Carolina Biotechnology Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management and to the Fiscal Research Division in the same manner as State departments and agencies in preparation for biennium budget requests.

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 13.11.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of two million two hundred fifty thousand six hundred ninety-seven dollars ($2,250,697) for the 2005-2006 fiscal year and the sum of two million twenty-five thousand six hundred ninety-seven dollars ($2,025,697) for the 2006-2007 fiscal year shall be allocated as follows:

	2005-2006	2006-2007
Research and Demonstration Grants	$370,000	$370,000
Technical Assistance and Center Administration of Research and Demonstration Grants	444,399	444,399
Center Administration, Oversight, and Other Programs	604,298	604,298
Administration of Clean Water/ Natural Gas Critical Needs Bond Act of 1998	199,722	199,722
Additional Administration of Supplemental Funding Program	363,278	138,278
Administration of Capacity Building Assistance Program (1998 Bond Act)	125,000	125,000
Institute for Rural Entrepreneurship	144,000	144,000.

SECTION 13.11.(b) Of the funds allocated for Additional Administration of Supplemental Funding Program for fiscal year 2005-2006 in subsection (a) of this section, the sum of seventy-five thousand dollars ($75,000) may be allocated to Pitt County, the sum of seventy-five thousand dollars ($75,000) to Martin County, and the sum of seventy-five thousand dollars ($75,000) to Hertford County for the purpose of water or wastewater projects.

SECTION 13.11.(c) The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

SECTION 13.11.(d) For purposes of this section, the term "community development corporation" means a nonprofit corporation:

(1) Chartered pursuant to Chapter 55A of the General Statutes;

(2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;

(3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;

(4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and

(5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

SECTION 13.11.(e) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of two million six hundred sixty-five thousand nine hundred ten dollars ($2,665,910) for the 2005-2006 fiscal year and the sum of two million six hundred sixty-five thousand nine hundred ten dollars ($2,665,910) for the 2006-2007 fiscal year shall be allocated as follows:

(1) $1,297,410 in each fiscal year for community development grants to support development projects and activities within the State's minority communities. Any new or previously funded community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center, Inc., shall establish performance-based criteria for determining which community development corporation will receive a grant and the grant amount. The Rural Economic Development Center, Inc., shall allocate these funds as follows:

a. $1,247,410 for direct grants to local community development corporations to support operations and project activities.

b. $50,000 in each fiscal year to the Rural Economic Development Center, Inc., to be used to cover expenses in administering this section.

(2) $195,000 in each fiscal year to the Microenterprise Loan Program to support the loan fund and operations of the Program; and

(3) $983,000 in each fiscal year shall be used for a program to provide supplemental funding for matching requirements for projects and activities authorized under this subsection. The Center shall allocate these funds as follows:

a. $675,000 in each fiscal year to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for:

1. Necessary economic development projects and activities in economically distressed areas;

2. Necessary water and sewer projects and activities in economically distressed communities to address health or environmental quality problems except that funds shall not be expended for the repair or replacement of low-pressure-pipe wastewater systems. If a grant is awarded under this sub-subdivision, then the grant shall be matched on a dollar-for-dollar basis in the amount of the grant awarded; or

3. Projects that demonstrate alternative water and waste management processes for local governments. Special consideration should be given to cost-effectiveness, efficacy, management efficiency, and the ability of the demonstration project to be replicated.

b. $208,000 in each fiscal year to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants related to water, sewer, or business development projects.

c. $100,000 in each fiscal year to support the update of the statewide water and sewer database and to support the development of a statewide water management plan.

(4) $190,500 in each fiscal year for the Agricultural Advancement Consortium. These funds shall be placed in a reserve and allocated as follows:

a. $75,000 in each fiscal year for operating expenses associated with the Consortium; and

b. $115,500 in each fiscal year for research initiatives funded by the Consortium.

The Consortium shall facilitate discussions among interested parties and shall develop recommendations to improve the State's economic development through farming and agricultural interests.

The grant recipients in this subsection shall be selected on the basis of need.

SECTION 13.11.(f) The Rural Economic Development Center, Inc., shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;

b. State fiscal year 2004-2005 itemized expenditures and fund sources;

c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and

d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;

b. State fiscal year 2005-2006 itemized expenditures and fund sources;

c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and

d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of each grant recipient's annual audited financial statement within 30 days of issuance of the statement.

SECTION 13.11.(g) No funds appropriated under this act shall be released to a community development corporation, as defined in this section, unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 13.12.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year and the sum of twenty million dollars ($20,000,000) for the 2006-2007 fiscal year shall be allocated as follows:

(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars ($15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide economic development research and demonstration grants.

SECTION 13.12.(b) The funds appropriated in this act to the Rural Economic Development Center, Inc., shall be recurring funds.

SECTION 13.12.(c) The Rural Economic Development Center, Inc., may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

SECTION 13.12.(d) During each year of the 2005-2007 biennium, the Rural Economic Development Center, Inc., may use up to two percent (2%) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

SECTION 13.12.(e) No later than January 15 each year, the Rural Economic Development Center, Inc., shall submit an annual report to the Joint Legislative Commission on Governmental Operations concerning the progress of the North Carolina Economic Infrastructure Program.

SECTION 13.12.(f) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., and allocated in subsection (a) of this section, the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year and the

sum of five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year shall be allocated to the e-NC Authority.

The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

The e-NC Authority shall report to the 2006 General Assembly on the following:

(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access the high-speed Internet.

(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

The e-NC Authority shall, by January 31, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities.

SECTION 13.12.(g) G.S.143B-437.46(b) reads as rewritten:

"(b) Commission. – The Authority shall be governed by a Commission. The Commission shall consist of ~~nine voting members and six non-voting ex officio~~ 15 voting members, as follows:

(1) Three members appointed by the Governor.

(2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) Six ~~ex officio, non-voting~~ ex officio members to include the Secretary of Commerce, the State Chief Information Officer, the President of the North Carolina Rural Economic Development Center, Inc., the Executive Director of the North Carolina Justice and Community Development Center, the Executive Director of the North Carolina League of Municipalities, the Executive Director of the North Carolina Association of County Commissioners, or their designees.

It is the intent of the General Assembly that the appointing authorities, in making appointments, shall consider members who represent the geographic, gender, and racial diversity of the State, members who represent rural counties, members who represent distressed urban areas, members who represent the regional partnerships, and members who represent the communications industry. For the purpose of this subsection, the term "communications industry" includes local telephone exchange companies, rural telephone cooperatives, Internet service providers, commercial wireless communications carriers, cable television companies, satellite companies, and other communications businesses."

OPPORTUNITIES INDUSTRIALIZATION CENTER FUNDS

SECTION 13.13.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of three hundred sixty-one thousand dollars ($361,000) for the 2005-2006 fiscal year and the sum of three hundred sixty-one thousand dollars ($361,000) for the 2006-2007 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers for ongoing job training programs.

SECTION 13.13.(b) For each of the Opportunities Industrialization Centers receiving funds pursuant to subsection (a) of this section, the Rural Economic Development Center, Inc., shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
   b. State fiscal year 2005-2006 itemized expenditures and fund sources;
   c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
   d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Notwithstanding G.S. 143-6.1(d), file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statements must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

(4) Provide to the Fiscal Research Division a copy of the annual audited financial statement required in subdivision (3) of this subsection within 30 days of issuance of the statement.

SECTION 13.13.(c) No funds appropriated under this act shall be released to an Opportunities Industrialization Center (hereinafter Center) listed in subsection (a) of this section if the Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

ONE NORTH CAROLINA SMALL BUSINESS PROGRAM

SECTION 13.14(a) G.S. 143B-437.71 reads as rewritten:

"§ **143B-437.71. One North Carolina Fund established as a nonreverting account.**

(a) Establishment. – The One North Carolina Fund is established as a special revenue fund in the Department of Commerce.

(b) Purposes. – Moneys in the One North Carolina Fund may only be allocated pursuant to this subsection. ~~only~~ Moneys may be allocated to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing ~~businesses.~~ businesses and to the One North Carolina Small Business Account created pursuant to subsection (c) of this section in an amount not to exceed three million dollars ($3,000,000). Moneys in the One North Carolina Fund allocated to local governments shall be used for the following purposes only:

(1) Installation or purchase of equipment.

(2) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.

(3) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.

(4) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.

(5) Any other purposes specifically provided by an act of the General Assembly.

(c) There is created in the One North Carolina Fund a special account, the One North Carolina Small Business Account, to be used for the North Carolina SBIR/STTR Incentive Program and the North Carolina SBIR/STTR Matching Funds Program, as specified in Part 2I of Article 10 of Chapter 143B of the General Statutes."

SECTION 13.14.(b) Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2I. One North Carolina Small Business Program.

"§ **143B-437.80. North Carolina SBIR/STTR Incentive Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of Science and Technology. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to offset costs associated with applying to the United States Small Business Administration for Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase I proposal.

(c) Grant. – The North Carolina Board of Science and Technology may award grants to reimburse an eligible business for up to fifty percent (50%) of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of three thousand dollars ($3,000). A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related supplies, literature searches, rental of space or equipment related to the proposal preparation, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of Science and Technology for a grant under this section on a form prescribed by the Board that includes at least all of the following:

(1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.

(2) An acknowledgement of receipt of the Phase I proposal by the relevant federal agency.

(3) An itemized statement of the costs that may be reimbursed.

(4) Any other information necessary for the Board to evaluate the application.

"**§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of Science and Technology. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal solicitation. To receive the full match, the business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

(c) Grant. – The North Carolina Board of Science and Technology may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of one hundred thousand dollars ($100,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Over its lifetime, a business may receive a maximum of five awards under this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of Science and Technology for a grant under this section on a form prescribed by the Board that includes at least all of the following:

(1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.

(2) An acknowledgement of receipt of the Phase I report and Phase II proposal by the relevant federal agency.

(3) Any other information necessary for the Board to evaluate the application.

"**§ 143B-437.82. Program guidelines.**

The Department of Commerce shall develop guidelines related to the administration of the One North Carolina Small Business Program. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

"**§ 143B-437.83. Reports.**

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Small Business Account at the end of each fiscal quarter. The report shall contain information on the disbursement and use of funds allocated under the One

North Carolina Small Business Program. The report is due no later than one month after the end of the fiscal quarter and must be submitted to the following:

(1) The Joint Legislative Commission on Governmental Operations.
(2) The chairs of the House of Representatives and Senate Finance Committees.
(3) The chairs of the House of Representatives and Senate Appropriations Committees.
(4) The Fiscal Research Division of the General Assembly."

PART XIV. JUDICIAL DEPARTMENT

DIVIDE DISTRICT COURT DISTRICT 20 AND PROSECUTORIAL DISTRICT 20 INTO 20A AND 20B AND REALIGN SUPERIOR COURT DISTRICTS 20A AND 20B/ESTABLISH ADDITIONAL SUPERIOR COURT JUDGESHIP FOR DISTRICT 20B EFFECTIVE JANUARY 1, 2011/DIVIDE SUPERIOR COURT, DISTRICT COURT, AND PROSECUTORIAL DISTRICTS 29 INTO DISTRICTS 29A AND 29B

SECTION 14.2.(a) G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones,	1
		Sampson	1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe,	1

		see subsection (b))	
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1

Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, Richmond ~~Richmond~~ Stanly	~~1~~ 2
Sixth	20B	~~Stanly,~~ Union	~~2~~ 1
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	3
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg, see subsection (b))	3
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	~~29~~	~~Henderson, McDowell, Polk, Rutherford, Transylvania~~	~~2~~
	29A	McDowell, Rutherford	1
Eighth	29B	Henderson, Polk, Transylvania	1
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth	30B	Haywood, Jackson	1."

SECTION 14.2.(b) The superior court judgeship transferred from District 20B to 20A by subsection (a) of this section shall be filled by the judge currently serving District 20B who resides in Stanly County. That judge's current term expires on December 31, 2006. No election shall be held in 2006 for that judge's seat, and that judge shall serve until a successor is elected in the 2008 general election, in order to provide for unstaggered terms for multiple judgeships in the same district.

SECTION 14.2.(c) The superior court judgeship for District 29A under subsection (a) of this section shall be filled by the superior court judge from current District 29 who resides in Rutherford County. That judge's term expires on December 31, 2012, and a successor shall be elected in the 2012 general election.

SECTION 14.2.(d) The superior court judgeship for District 29B under subsection (a) of this section shall be filled by the superior court judge from current District 29 who resides in Henderson County. That judge's term expires on December 31, 2006, and a successor shall be elected in the 2006 general election.

SECTION 14.2.(e) The trial court administrator serving current District 29 shall serve as trial court administrator for both District 29A and District 29B.

SECTION 14.2.(e1) Effective January 1, 2011, G.S. 7A-41(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones,	1
		Sampson	1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake,	2

		see subsection (b))	
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1
Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, Richmond Stanly	2
Sixth	20B	Union	~~1~~ 2
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth,	1

		see subsection (b))	
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	3
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg, see subsection (b))	3
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	29A	McDowell, Rutherford	1
Eighth	29B	Henderson, Polk, Transylvania	1
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth	30B	Haywood, Jackson	1."

SECTION 14.2.(e2) The superior court judgeship established for District 20B by subsection (e1) of this section effective January 1, 2011, shall be filled by election in the 2010 general election. No election shall be held in 2006 for the seat of the judge currently serving District 20B and residing in Union County, and that judge shall serve until a successor is elected in the 2010 general election, in order to provide for unstaggered terms for multiple judgeships in the same district.

SECTION 14.2.(f) G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	5	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	4	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	5	Pitt
3B	5	Craven

		Pamlico
		Carteret
4	8	Sampson
		Duplin
		Jones
		Onslow
5	8	New Hanover
		Pender
6A	2	Halifax
6B	3	Northampton
		Bertie
		Hertford
7	7	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir
9	4	Granville
		(part of Vance
		see subsection (b))
		Franklin
9A	2	Person
		Caswell
9B	2	Warren
		(part of Vance
		see subsection (b))
10	15	Wake
11	8	Harnett
		Johnston
		Lee
12	9	Cumberland
13	6	Bladen
		Brunswick
		Columbus
14	6	Durham
15A	4	Alamance
15B	4	Orange
		Chatham
16A	3	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	4	Stokes
		Surry
18	12	Guilford
19A	4	Cabarrus
19B	6	Montgomery
		Moore

		Randolph
19C	4	Rowan
~~20~~ 20A	~~7~~ 4	Stanly
		~~Union~~
		Anson
		Richmond
20B	3	Union
21	9	Forsyth
22	9	Alexander
		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	8	Burke
		Caldwell
		Catawba
26	17	Mecklenburg
27A	6	Gaston
27B	4	Cleveland
		Lincoln
28	6	Buncombe
~~29~~	~~7~~	~~Henderson~~
		~~McDowell~~
		~~Polk~~
		~~Rutherford~~
		~~Transylvania~~
29A	3	McDowell
		Rutherford
29B	4	Henderson
		Polk
		Transylvania
30	5	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

SECTION 14.2.(g) The four district court judgeships for District 20A under subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Anson, Stanly, and Richmond Counties. The term of

the judge living in Anson County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 election. The term of the judge living in Stanly County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election. The term of one of the judges living in Richmond County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election. The term of the other judge living in Richmond County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 election.

SECTION 14.2.(h) The three district court judgeships for District 20B under subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Union County. The terms of the three judges living in Union County expire the first Monday in December 2008. Those judges' successors shall be elected in the 2008 election.

SECTION 14.2.(i) The three district court judgeships for District 29A under subsection (f) of this section shall be filled by the district court judges from current District 29 who reside in McDowell and Rutherford Counties and by the judge established for District 29 to be appointed by the Governor pursuant to Section 14.6 of S.L. 2004-124, as amended by subsection (j) of this section. The term of the judge living in Rutherford County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 general election. The term of the judge living in McDowell County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election.

SECTION 14.2.(j) Section 14.6(f) of S.L. 2004-124 reads as rewritten:

"**SECTION 14.6.(f)** The Governor shall appoint the additional district court judges for Districts 5, 21, and ~~29~~ 29A authorized by subsection (e) of this section, and those judges' successors shall be elected in the 2006 general election for four-year terms commencing on the first Monday in December 2006.

The district court judge for the additional judgeship in District 17B, as authorized by subsection (e) of this section, shall be elected in the 2004 general election in the same manner as provided for in G.S. 163-329 to serve a four-year term beginning the first Monday in December 2004, and no vacancy exists before that date."

SECTION 14.2.(k) The four district court judgeships for District 29B under subsection (f) of this section shall be filled by the district court judges from current District 29 who reside in Henderson and Transylvania Counties. The term of the three judges living in Henderson County expires the first Monday in December 2008. Those judges' successors shall be elected in the 2008 general election. The term of the judge living in Transylvania County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 general election.

SECTION 14.2.(l) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	10
2	Beaufort, Hyde, Martin,	6

	Tyrrell, Washington	
3A	Pitt	9
3B	Carteret, Craven, Pamlico	10
4	Duplin, Jones, Onslow, Sampson	14
5	New Hanover, Pender	14
6A	Halifax	4
6B	Bertie, Hertford, Northampton	4
7	Edgecombe, Nash, Wilson	16
8	Greene, Lenoir, Wayne	11
9	Franklin, Granville, Vance, Warren	11
9A	Person, Caswell	4
10	Wake	31
11	Harnett, Johnston, Lee	14
12	Cumberland	18
13	Bladen, Brunswick, Columbus	11
14	Durham	13
15A	Alamance	8
15B	Orange, Chatham	7
16A	Scotland, Hoke	5
16B	Robeson	10
17A	Rockingham	5
17B	Stokes, Surry	5
18	Guilford	27
19A	Cabarrus	6
19B	Montgomery, Moore, Randolph	11
19C	Rowan	5
~~20~~ 20A	Anson, Richmond, ~~Stanly, Union~~ Stanly	~~15~~ 8
20B	Union	7
21	Forsyth	17
22	Alexander, Davidson, Davie, Iredell	16
23	Alleghany, Ashe, Wilkes, Yadkin	5
24	Avery, Madison, Mitchell, Watauga, Yancey	4
25	Burke, Caldwell, Catawba	15
26	Mecklenburg	36
27A	Gaston	12
27B	Cleveland, Lincoln	9
28	Buncombe	11
~~29~~	~~Henderson, McDowell, Polk, Rutherford, Transylvania~~	~~11~~
29A	McDowell, Rutherford	5
29B	Henderson, Polk, Transylvania	6

30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	9

SECTION 14.2.(m) The district attorneys established for Districts 20A, 20B, 29A, and 29B by subsection (l) of this section shall be elected in the 2006 general election.

SECTION 14.2.(n) The eight assistant district attorney positions for District 20A under subsection (l) of this section shall be filled by eight assistant district attorneys currently serving Anson, Richmond, and Stanly Counties in District 20. The seven assistant district attorney positions established for District 20B by subsection (l) of this section shall be filled by seven assistant district attorneys currently serving Union County in District 20.

SECTION 14.2.(o) The five assistant district attorney positions for District 29A under subsection (l) of this section shall be filled by five assistant district attorneys currently serving McDowell and Rutherford Counties in current District 29. The six district attorney positions for District 29B under subsection (l) of this section shall be filled by six assistant district attorneys currently serving Henderson, Polk, and Transylvania Counties in current District 29.

SECTION 14.2.(p) G.S. 7A-69 reads as rewritten:

"§ **7A-69. Investigatorial assistants.**

The district attorney in prosecutorial districts 1, 3B, 4, 5, 7, 8, 11, 12, 13, 14, 15A, 15B, 16A, 18, 19B, ~~20,~~ 20A, 20B, 21, 22, 24, 25, 26, 27A, 27B, 28, ~~29,~~ 29A, 29B, and 30 is entitled to one investigatorial assistant, and the district attorney in prosecutorial district 10 is entitled to two investigatorial assistants, to be appointed by the district attorney and to serve at his pleasure.

It shall be the duty of the investigatorial assistant to investigate cases preparatory to trial and to perform such other Duties as may be assigned by the district attorney. The investigatorial assistant is entitled to reimbursement for his subsistence and travel expenses to the same extent as State employees generally."

SECTION 14.2.(q) With respect to the realignment of Superior Court Districts 20A and 20B, subsections (a) through (e) of this section become effective December 1, 2005, or the date upon which subsection (a) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the addition of a judge in Superior Court District 20B, subsections (e1) and (e2) of this section become effective January 1, 2011, or the date upon which subsection (e1) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the division of Superior Court District 29, subsections (a) through (e) of this section become effective December 1, 2005. With respect to the division of District Court District 20, subsections (f) through (k) of this section become effective December 1, 2005, or the date upon which subsection (f) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the division of District Court District 29, subsections (f) through (k) of this section become effective December 1, 2005. With respect to the division of Prosecutorial District 20, subsections (l) through (p) of this section become effective January 1, 2007, or the date upon which subsection (l) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later, but the district attorneys for Prosecutorial Districts 20A and 20B shall be elected in the 2006 general election. With respect to the division of Prosecutorial District 29, subsections (l) through (p) of this section become effective

January 1, 2007, but the district attorneys for Prosecutorial Districts 29A and 29B shall be elected in the 2006 general election.

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 14.3. Notwithstanding the provisions of G.S. 7A-308(c) and except as otherwise provided in this act, the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2005, for the purchase or repair of office or information technology equipment during the 2005-2006 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

SECTION 14.4. Funds appropriated to the Judicial Department in the 2005-2007 biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

STUDY ELECTRONIC PAYMENT

SECTION 14.5. The Judicial Department shall study the feasibility of implementing electronic and online payment options for court fees and other funds collected by the courts. The study shall address the estimated costs and time frame for implementing electronic payment as well as any necessary legislative changes. The report shall specifically evaluate the feasibility and cost of requiring all court-ordered payments to be entered into the Department's financial management system, and shall provide options for ensuring that this data is entered, including information systems enhancements that will allow fields to be automatically populated from the court information system into the financial management system. The Judicial Department shall report its findings as a result of the study to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006.

GRANT FUNDS

SECTION 14.6. The Judicial Department shall use up to the sum of one million two hundred fifty thousand dollars ($1,250,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

INCREASE CHARGES FOR APPELLATE DIVISION REPORTS TO ACTUAL COST

SECTION 14.7. The Judicial Department shall charge the full cost of production for all copies of the appellate division reports that are sold.

NORTH CAROLINA STATE BAR FUNDS

SECTION 14.8. Of the funds appropriated in the continuation budget as a grant-in-aid to the North Carolina State Bar for the 2005-2007 biennium, the North Carolina State Bar may in its discretion use up to the sum of five hundred one thousand five hundred dollars ($501,500) for the 2005-2006 fiscal year and up to the sum of five hundred one thousand five hundred dollars ($501,500) for the 2006-2007 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1, 2006, to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the activities funded by the grant-in-aid authorized by this section.

TRANSFER RESPONSIBILITY FOR PROVIDING LEGAL ASSISTANCE TO INMATES FROM THE DEPARTMENT OF CORRECTION TO THE OFFICE OF INDIGENT DEFENSE SERVICES

The General Assembly of North Carolina enacts:

SECTION 14.9.(a) G.S. 7A-498.3 reads as rewritten:

"§ **7A-498.3. Responsibilities of Office of Indigent Defense Services.**

(a) The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:

(1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;

(2) Cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1; ~~and~~

(2a) Cases in which the State is legally obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction; and

(3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. ~~The~~ Except in cases under subdivision (2a) of subsection (a) of this section, the court shall determine in each case whether a person is indigent and entitled to legal representation, and counsel shall be appointed as provided in G.S. 7A-452.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office of Indigent Defense Services.

(d) The Office of Indigent Defense Services shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office."

SECTION 14.9.(b) Effective October 1, 2005, the State's responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts shall be administered by the Office of Indigent

Defense Services. The existing contract between the Department of Correction and Prisoner Legal Services, Inc., shall not be extended or renewed beyond that date.

The Director of the Office of Indigent Defense Services shall contract with Prisoner Legal Services, Inc., to provide legal services and access to the courts for inmates for a period of two years, from October 1, 2005, through September 30, 2007. During this time, the Director of Indigent Defense Services shall evaluate the services provided by Prisoner Legal Services, Inc. The Office of Indigent Defense Services shall provide an interim report of its evaluation to the Chairs of the Senate and House of Representatives Appropriations Committees and Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006, and a final report of its evaluation by May 1, 2007. The interim report shall describe the evaluation process and criteria, the status of the evaluation, and any preliminary findings.

SECTION 14.9.(c) The sum of one million eight hundred eighty-three thousand eight hundred sixty-five dollars ($1,883,865) for the 2005-2006 fiscal year and the sum of two million five hundred eleven thousand eight hundred twenty dollars ($2,511,820) for the 2006-2007 fiscal year shall be transferred from the Department of Correction to the Office of Indigent Defense Services to implement this section.

SECTION 14.9.(d) Subsections (a) and (b) of this section become effective October 1, 2005. The remainder of this section becomes effective July 1, 2005.

WAKE COUNTY PUBLIC DEFENDER OFFICE FUNDS

SECTION 14.10. Of the funds appropriated to the Judicial Department, Office of Indigent Defense Services, in this act, the Office of Indigent Defense Services shall use up to the sum of two million three hundred thousand five hundred thirty-four dollars ($2,300,534) for the 2005-2006 fiscal year and the sum of two million one hundred eighty-one thousand three hundred twenty-three dollars ($2,181,323) for the 2006-2007 fiscal year to establish a public defender's office in the Tenth Defender District, as authorized by Section 14.4(b) of S.L. 2004-126. The funds shall be used to establish the public defender, 20 assistant public defenders, four investigators, one administrative assistant II, and five legal assistants.

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 14.11. The Judicial Department, Office of Indigent Defense Services, may use up to the sum of one million sixty-nine thousand six hundred forty-five dollars ($1,069,645) in appropriated funds during the 2005-2006 fiscal year and up to the sum of one million twenty-three thousand one hundred thirty-five dollars ($1,023,135) in appropriated funds during the 2006-2007 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services by creating up to 10 new attorney positions and five new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

OFFICE OF INDIGENT DEFENSE SERVICES REPORT

SECTION 14.12. The Office of Indigent Defense Services shall report to the Chairs of the Senate and House of Representatives Appropriations Committees

and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

(1) The volume and cost of cases handled in each district by assigned counsel or public defenders;

(2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;

(3) Plans for changes in rules, standards, or regulations in the upcoming year; and

(4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services.

The Office shall also consult with the Conference of District Attorneys of North Carolina, the Conference of District Court Judges, and the Conference of Superior Court Judges in formulating proposals aimed at reducing future costs, including the possibility of decriminalizing minor traffic offenses, changing the way that criminal district court is scheduled, and reevaluating the handling of capital cases. The Office shall include these proposals in its reports during the 2005-2007 fiscal biennium.

CLARIFY THAT FEES PAID TO ATTORNEYS REPRESENTING INDIGENT CLIENTS SHALL BE FIXED IN ACCORDANCE WITH THE RULES ADOPTED BY THE OFFICE OF INDIGENT DEFENSE SERVICES AND MAY NOT BE SET AT HIGHER RATES WITHOUT THE APPROVAL OF THE OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 14.13. G.S. 7A-458 reads as rewritten:

"§ **7A-458. Counsel fees.**

The fee to which an attorney who represents an indigent person is entitled shall be fixed in accordance with rules adopted by the Office of Indigent Defense Services. Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the time, effort and responsibility involved. Fees shall not be set or ordered at rates higher than those established by the rules adopted under this section without the approval of the Office of Indigent Defense Services. Even if the trial, appeal, hearing or other proceeding is never held, preparation therefor is nevertheless compensable and, in capital cases and other extraordinary cases pending in superior court, a fee for services rendered and payment for expenses incurred may be allowed pending final determination of the case."

ESTABLISH PUBLIC DEFENDER'S OFFICE IN THE FIFTH DEFENDER DISTRICT

SECTION 14.14.(a) G.S. 7A-498.7(a) reads as rewritten:

"§ **7A-498.7. Public Defender Offices.**

(a) The following counties of the State are organized into the defender districts listed below, and in each of those defender districts an office of public defender is established:

Defender District	Counties
1	Camden, Chowan, Currituck, Dare, Gates,

	Pasquotank, Perquimans
3A	Pitt
3B	Carteret
5	New Hanover, Pender
10	Wake
12	Cumberland
14	Durham
15B	Orange, Chatham
16A	Scotland, Hoke
16B	Robeson
18	Guilford
21	Forsyth
26	Mecklenburg
27A	Gaston
28	Buncombe

After notice to, and consultation with, the affected district bar, senior resident superior court judge, and chief district court judge, the Commission on Indigent Defense Services may recommend to the General Assembly that a district or regional public defender office be established. A legislative act is required in order to establish a new office or to abolish an existing office."

SECTION 14.14.(b) Of the funds appropriated to the Judicial Department, Office of Indigent Defense Services, in this act, the Office of Indigent Defense Services shall use up to the sum of one million three hundred eighty-five thousand five hundred eighty-four dollars ($1,385,584) for the 2005-2006 fiscal year and up to the sum of one million three hundred eighty-five thousand five hundred eighty-four dollars ($1,385,584) for the 2006-2007 fiscal year to establish a public defender's office in the Fifth Defender District, as established in this section. The funds shall be used to establish the public defender, 11 assistant public defenders, two investigators, and three support positions.

MEDIATION FUNDS

SECTION 14.16. Of the funds appropriated to the Judicial Department for transfer to the community mediation centers for the 2005-2006 fiscal year, the sum of one hundred thirty-four thousand thirty-one dollars ($134,031) shall be allocated to Carolina Dispute Settlement Services, Inc., to serve Wake, Vance, Granville, Franklin, and Warren Counties, and the sum of sixty-five thousand dollars ($65,000) shall be allocated to Women-in-Action for the Prevention of Violence and Its Causes, Inc., to serve Durham County.

STUDY WAKE COUNTY FAMILY COURT

SECTION 14.18. The Administrative Office of the Courts shall study the feasibility of establishing a family court in District Court District 10. The Administrative Office of the Courts shall report the results of its study to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

JUVENILE RECIDIVISM REPORT

SECTION 14.19.(a) Chapter 164 of the General Statutes is amended by adding a new section to read:

"§ **164-48. Biennial report on juvenile recidivism.**

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct biennial recidivism studies of juveniles in North Carolina. Each study shall be based upon a sample of juveniles adjudicated delinquent and document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample adjudication. All State agencies shall provide data as requested by the Commission.

The Sentencing and Policy Advisory Commission shall report the results of the first recidivism study to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2007, and future reports shall be made by May 1 of each odd-numbered year."

SECTION 14.19.(b) The Sentencing and Policy Advisory Commission shall report on its progress in developing the biennial juvenile recidivism report mandated by G.S. 164-48, as enacted by subsection (a) of this section, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006.

SECTION 14.19.(c) Article 33 of Chapter 7B of the General Statutes is repealed.

REIMBURSEMENT FOR USE OF PERSONAL VEHICLES

SECTION 14.21. Notwithstanding G.S. 138-6(a)(1), the Judicial Department, during the 2005-2007 fiscal biennium, may elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

DRUG TREATMENT COURT FUNDS

SECTION 14.22. Funds appropriated to the Judicial Department in this act for the Drug Treatment Court program shall be used only to provide treatment and case coordination to offenders sentenced to intermediate punishment and to offenders sentenced to community punishment who are at risk of revocation.

PART XV. DEPARTMENT OF JUSTICE

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

SECTION 15.1.(a) Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2005-2007 biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

SECTION 15.1.(b) The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects,

acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

SECTION 15.1.(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

SECTION 15.2. The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those Boards by the State.

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS

SECTION 15.3. Client departments, agencies, and boards shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board.

REIMBURSEMENT FOR UNC BOARD OF GOVERNORS LEGAL REPRESENTATION

SECTION 15.4. The Department of Justice shall be reimbursed by the Board of Governors of The University of North Carolina for two Attorney III positions to provide legal representation to The University of North Carolina System.

REPORT ON CRIMINAL RECORD CHECKS CONDUCTED FOR CONCEALED HANDGUN PERMITS/STUDY FEE ADJUSTMENT FOR CRIMINAL RECORD CHECKS

SECTION 15.5.(a) The Department of Justice shall report by January 15 each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the receipts, costs for, and number of criminal record checks performed in connection with applications for concealed weapons permits. The report by the Department of Justice shall also include information on the number of applications received and approved for firearms safety courses.

SECTION 15.5.(b) The Office of State Budget and Management, in consultation with the Department of Justice, shall study the feasibility of adjusting the fees charged for criminal record checks conducted by the Division of Criminal Information of the Department of Justice as a result of the increase in receipts from criminal record checks. The study shall include an assessment of the Division's operational, personnel, and overhead costs related to providing criminal record checks and how those costs have changed since the prior fiscal year. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the

Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

NC LEGAL EDUCATION ASSISTANCE FOUNDATION REPORT ON FUNDS DISBURSED

SECTION 15.6. The North Carolina Legal Education Assistance Foundation shall report by March 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State funds, the purpose of the expenditures, the number of attorneys receiving funds, the average award amount, the average student loan amount, the number of attorneys on the waiting list, and the average number of years for which attorneys receive loan assistance.

REDUCE BACKLOG OF RAPE KITS

SECTION 15.7.(a) Of the funds appropriated by this act to the Department of Justice, the sum of two hundred fifty thousand dollars ($250,000) for the 2005-2006 fiscal year and the sum of two hundred fifty thousand dollars ($250,000) for the 2006-2007 fiscal year shall be used to contract with private entities to reduce the backlog of rape kits in storage in local law enforcement agencies and to expedite other forensic DNA analysis. The Department shall contract with private entities to analyze bodily fluids, DNA evidence, as "DNA" is defined in G.S. 15A-266.2, or both, in cases in which a suspect has not been identified. The Department shall maximize the use of federal grant funds to expedite the elimination of the backlog.

SECTION 15.7.(b) The Department of Justice shall report, on or before February 1, 2006, and annually thereafter to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the number of rape kits analyzed by private entities and how many of those analyses resulted in arrests or convictions. The Department shall also report on the number of rape kits analyzed by the SBI Crime Lab, the amount of the remaining backlog, and the estimated time left to eliminate the backlog.

SECTION 15.7.(c) Except as provided otherwise by this subsection, the Department of Justice shall hire only nonsworn personnel to fill vacant positions in the State Bureau of Investigation laboratory. A position may be filled with a sworn agent in any of the following circumstances: (i) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation laboratory prior to July 1, 2005, (ii) the position is a forensic drug chemist position that has as a primary duty "responding to clandestine methamphetamine laboratories," or (iii) the position is a forensic impressions analyst position that has as a primary duty "responding to clandestine methamphetamine laboratories."

STUDY DNA TESTING AND ANALYSIS COSTS

SECTION 15.8. The Office of State Budget and Management, in consultation with the Department of Justice, shall study the cost of testing and analyzing DNA samples. The study shall include all of the following: a determination of the unit cost for analyzing a rape kit and a comparison of that cost with the unit cost for the same analysis when performed by other labs, both public and private; a comparison of the amount of funds and length of time required to eliminate the backlog of rape kits using private labs versus the SBI crime lab; and a survey of the funding sources used by other states for their DNA testing and analysis lab costs. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate

and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

STATEWIDE AUTOMATED FINGERPRINT SYSTEM REPLACEMENT

SECTION 15.9.(a) The Department of Justice, in consultation with the Criminal Justice Information Network Board, shall continue to plan for the upgrade and replacement of the North Carolina Statewide Automated Fingerprint Identification System (SAFIS). Prior to any determination to pursue sole-source procurement for this project, the Department of Justice shall issue a request for proposals from qualified vendors on a competitive basis in order to evaluate economies available to the State and options for the transfer of data to the new system. The Department of Justice shall negotiate with the current vendor to develop an agreement regarding maintenance of the current equipment until the new system becomes fully operational.

SECTION 15.9.(b) By November 1, 2005, and prior to issuing the Request for Proposals, the Department of Justice and the Criminal Justice Information Network Board shall provide a status report to the Subcommittee for Justice and Public Safety of the Joint Legislative Commission on Governmental Operations that shall include all of the following:

(1) A description of the system and project status report.
(2) The cost estimates for equipment replacement, maintenance, and operating costs, including proposed sources of funding.
(3) An inventory of locally owned SAFIS equipment, the compatibility of that equipment with any new State-level hardware, the time line and cost for replacing obsolete equipment, and options for funding the replacement of local equipment.
(4) Procurement options.
(5) The time line for completion of the project.

SECTION 15.9.(c) By March 1, 2006, and prior to entering into any contract for services or equipment, the Department of Justice shall consult with the Subcommittee for Justice and Public Safety of the Joint Legislative Commission on Governmental Operations regarding the final request for proposal responses, the Department's recommendations for awarding the contract, and the Department's implementation schedule.

SECTION 15.9.(d) Notwithstanding G.S. 143-18, the Department of Justice may carry forward an amount not to exceed one million four hundred ninety-five thousand dollars ($1,495,000) of the operating funds that otherwise would revert in fiscal year 2004-2005 and deposit those funds in a reserve account in the Office of State Budget and Management. This reserve shall be distributed by the Office of State Budget and Management to support the replacement of the State's SAFIS system and equipment. These funds shall not be used to expand the SAFIS system capacity or usage for noncriminal justice agencies or to purchase equipment for non-State entities.

Prior to the report required by November 1, the Office of State Budget and Management is authorized to release reserve funds to support project management, planning, and procurement activities. After the March 1 consultation, the Office of State Budget and Management may, at its discretion, release reserve funds for onetime equipment purchases, fingerprint file conversion, and related nonrecurring SAFIS system replacement needs. Priority shall be given to replacing the central hardware and database in the State Bureau of Investigation.

PART XVI. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

S.O.S. ADMINISTRATIVE COST LIMITS

SECTION 16.1. Of the funds appropriated to the Department of Juvenile Justice and Delinquency Prevention in this act, not more than four hundred fifty thousand dollars ($450,000) for the 2005-2006 fiscal year and not more than four hundred fifty thousand dollars ($450,000) for the 2006-2007 fiscal year may be used to administer the S.O.S. Program, to provide technical assistance to applicants and to local S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

JCPC GRANT REPORTING AND CERTIFICATION

SECTION 16.2.(a) On or before May 1 each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants. The list shall include for each recipient the amount of the grant awarded, the membership of the local committee or council administering the award funds on the local level, and a short description of the local services, programs, or projects that will receive funds. The list shall also identify any programs that received grant funds at one time but for which funding has been eliminated by the Department of Juvenile Justice and Delinquency Prevention. A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

SECTION 16.2.(b) Each county in which local programs receive Juvenile Crime Prevention Council grant funds from the Department of Juvenile Justice and Delinquency Prevention shall certify annually through its local council to the Department that funds received are not used to duplicate or supplant other programs within the county.

REPORTS ON CERTAIN PROGRAMS

SECTION 16.3.(a) Project Challenge North Carolina, Inc., shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

(1) The source of referrals for juveniles.
(2) The types of offenses committed by juveniles participating in the program.
(3) The amount of time those juveniles spend in the program.
(4) The number of juveniles who successfully complete the program.
(5) The number of juveniles who commit additional offenses after completing the program.
(6) The program's budget and expenditures, including all funding sources.

SECTION 16.3.(b) The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

SECTION 16.3.(c) Communities in Schools shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Education Oversight Committee by April 1 each year on the operation and effectiveness of its program. The report shall include information on:

(1) The number of children served.
(2) The number of volunteers used.
(3) The impact on children who have received services from Communities in Schools.
(4) The program's budget and expenditures, including all funding sources.

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 16.4. The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs, the teen court programs, the program that grants funds to the local organizations of the Boys and Girls Clubs established pursuant to Section 21.10 of S.L. 1999-237, the Save Our Students program, the Governor's One-on-One Programs, and multipurpose group homes. The teen court report shall include statistical information on the number of juveniles served, the number and type of offenses considered by teen courts, referral sources for teen courts, and the number of juveniles that become court-involved after participation in teen courts. The report on the Boys and Girls Clubs program shall include information on:

(1) The expenditure of State appropriations on the program;
(2) The operations and the effectiveness of the program; and
(3) The number of juveniles served under the program.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department shall also identify whether the programs are achieving the goals and objectives of the Juvenile Justice Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by March 1 of each year.

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 16.5. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2005-2006 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants, or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency

Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2005-2006 fiscal year, the amount of funds anticipated for the 2006-2007 fiscal year, and the allocation of funds by program and purpose.

IMPLEMENTATION OF TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 16.6.(a) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

SECTION 16.6.(b) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

PROGRESS REPORTS ON YOUTH DEVELOPMENT CENTER CAPITAL PROJECTS

SECTION 16.7. The Department of Juvenile Justice and Delinquency Prevention shall report each December 31, March 31, June 30, and September 30 of the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the Department's progress in the planning, design, and construction of new youth development centers. The report shall include:

(1) An overall project schedule for each new youth development center showing the original estimated date for construction completion and the original estimated date for occupancy by juvenile offenders, compared to the latest projected dates.

(2) An explanation of significant delays in the schedule or any potential cost increase.

The Office of State Construction and the Capital Improvement Section of the Office of State Budget and Management shall assist the Department of Juvenile Justice and Delinquency Prevention in the preparation of the report required by this section.

JCPC GRANTS TO PREVENT GANG VIOLENCE

SECTION 16.8.(a) Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for Juvenile Crime Prevention Council grants, the sum of two million dollars ($2,000,000) shall be used to provide two-year grants to Juvenile Crime Prevention Councils to use for street gang violence prevention and intervention programs. The Department, in conjunction with the Governor's Crime Commission, shall develop a competitive grant award process that gives consideration to programs in rural areas, geographical representation, collaboration among counties, and programs that involve law enforcement agencies or the courts. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Juvenile Crime Prevention Councils shall allocate the funds to public and private entities or agencies for programs that meet the criteria established by the Department.

No individual program grant may exceed one hundred thousand dollars ($100,000).

SECTION 16.8.(b) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate on the total number of grants awarded, a description of each grantee's program, and the amount awarded to each grantee. The Department shall submit its report by April 1, 2006.

STUDY OF LOCAL DETENTION CENTERS

SECTION 16.9. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee ("Committee") shall study the four juvenile detention centers located in Durham, Guilford, Forsyth, and Mecklenburg Counties that are operated by the counties. For each of the facilities, the review shall include:

(1) Recent admission trends and projections of future population.
(2) The offense history and assessed needs of the population.
(3) Whether staffing levels are appropriate for the number and types of offenders housed in the facility.
(4) Whether the center has adequate housing capacity.
(5) The cost to operate the center, including the formula for allocating costs between the county that operates the facility and the State.
(6) The feasibility of the State operating the local detention center, if recommended by one or more of the counties that operate the facility.
(7) Determine the repair and renovation needs and estimate the cost of any repairs or renovations.
(8) The estimated cost to plan, design, and construct new detention centers, if appropriate.

The Committee shall conduct the study in conjunction with the local detention centers, the Office of State Budget and Management, the Office of State

Construction of the Department of Administration, and the Department of Juvenile Justice and Delinquency Prevention.

The Committee shall report its findings to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate upon the convening of the 2006 Regular Session of the 2005 General Assembly.

CONSTRUCTION OF JUVENILE YOUTH DEVELOPMENT CENTERS

SECTION 16.10 The Department of Juvenile Justice and Delinquency Prevention and the Department of Administration, State Construction Office, shall continue the planning, design, and construction of up to 224 youth development center beds. The 224 youth development center beds shall be allocated at four 32-bed facilities and one 96-bed facility, as recommended by the Department of Juvenile Justice and Delinquency Prevention in its Capital Plan presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on November 23, 2004.

ALTERNATIVES TO JUVENILE COMMITMENT/JUVENILE CRIME PREVENTION COUNCILS

SECTION 16.11.(a) Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention, the sum of two hundred fifty thousand dollars ($250,000) shall be used to expand Juvenile Crime Prevention Councils demonstration projects designed to reduce commitments to youth development centers. Specifically, the funds shall be awarded to Juvenile Crime Prevention Councils to provide residential and/or community-based intensive services to juveniles who have been adjudicated delinquent with a level 2 or 3 disposition or who are reentering the community after serving time in a youth development center. The Department shall develop a competitive grant award process to allocate the funds to county Juvenile Crime Prevention Councils. The programs must initiate services to the targeted population no later than March 1, 2006. On June 30, 2006, any funds not awarded for demonstration projects pursuant to this section by the Department shall revert to the General Fund. The Department may award up to four grants to Juvenile Crime Prevention Councils, and no individual grant may exceed one hundred thousand dollars ($100,000).

SECTION 16.11.(b) The Department of Juvenile Justice and Delinquency Prevention shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than March 1, 2006, on the implementation and award process. The report shall provide a detailed description of the services to be provided by each program, the number and types of juveniles to be served, and the amount awarded to each program.

SECTION 16.11.(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety no later than March 1, 2006, and annually thereafter, on the results of the alternatives to commitment demonstration programs funded by Section 16.7 of S.L. 2004-124. The 2007 report and all annual reports thereafter shall also include projects funded by this section for the 2005-2006 fiscal year. Specifically, the report shall provide a detailed description of each of the demonstration programs, including the numbers of juveniles served, their adjudication

status at the time of service, the services/treatments provided, the length of service, the total cost per juvenile, and the six- and 12-month recidivism rates for the juveniles after the termination of program services.

JUVENILE JUSTICE ADVISORY COUNCIL MEETINGS

SECTION 16.12. G.S. 143B-556(i) reads as rewritten:

"(i) The chairs shall convene the Council. Meetings shall be held as often as ~~necessary but not less than four times a year.~~necessary."

PART XVII. DEPARTMENT OF CORRECTION

FEDERAL GRANT REPORTING

SECTION 17.1. The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

SECTION 17.2. The Department of Correction may use funds available to the Department for the 2005-2007 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

HOLIDAY PAY FOR DEPARTMENT OF CORRECTION STAFF

SECTION 17.3. Holiday pay for Department of Correction staff entitled to holiday pay shall be one hundred fifty percent (150%) of regular pay during the 2005-2007 biennium, except that the Department of Correction may use funds available to pay up to one hundred seventy-five percent (175%) of regular pay for holiday pay during the 2005-2007 biennium.

DEPARTMENT OF CORRECTION SECURITY STAFFING FORMULAS

SECTION 17.4.(a) G.S. 143B-262.5 reads as rewritten:

"§ **143B-262.5. Security Staffing.**

(a) The Department of Correction shall ~~conduct security staffing post-audits of each prison at least biannually, the first such audit to be completed during the 2002-2003 fiscal year. The initial post-audit shall be conducted jointly by Department staff and a consultant, external to the Department, and shall include analysis of the staffing levels assigned for supervision of correctional officers.~~ conduct:

(1) On-site postaudits of every prison at least once every three years;

(2) Regular audits of postaudit charts through the automated postaudit system; and

(3) Other staffing audits as necessary.

(b) The Department of Correction shall update the security staffing relief formula ~~biannually, the first update to be completed during the 2002-2003 fiscal year.~~ at least every three years. Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training. The Department shall survey other states to determine which states use a vacancy factor in their staffing relief formulas."

SECTION 17.4.(b) The Department of Correction shall begin implementation of the 2004-2005 postaudit by July 1, 2005, and provide a progress report by October 1, 2005, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the implementation of the new postaudit at each prison.

SECTION 17.4.(c) The Department of Correction shall report on the final implementation of the 2004-2005 postaudit of each prison to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006. The report shall also include an update on the Department's progress in implementing the staffing recommendations of the National Institute of Corrections, including a status report on the implementation of a centralized postaudit control system, the automation of leave records, and the survey of other states' use of a vacancy factor in staffing relief formulas.

USE OF CLOSED PRISON FACILITIES

SECTION 17.5. In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the

lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction shall also provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

INMATE COSTS/MEDICAL BUDGET FOR PRESCRIPTION DRUGS AND INMATE CLOTHING AND LAUNDRY SERVICES

SECTION 17.6.(a) If the cost of providing food and health care to inmates housed in the Division of Prisons is anticipated to exceed the continuation budget amounts provided for that purpose in this act, the Department of Correction shall report the reasons for the anticipated cost increase and the source of funds the Department intends to use to cover those additional needs to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

SECTION 17.6.(b) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

SECTION 17.6.(c) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for the purchase of clothing and laundry services for inmates if expenditures are projected to exceed the Department's budget for clothing and laundry services. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

CONVERSION OF CONTRACTED MEDICAL POSITIONS

SECTION 17.7.(a) The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document that the total savings generated will exceed the total cost of the new positions for each facility. Where practical, the Department shall convert contract positions to permanent positions by using existing vacancies in medical positions.

SECTION 17.7.(b) The Department of Correction shall report by April 1, 2006, to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated at each correctional facility.

LIMIT USE OF OPERATIONAL FUNDS

SECTION 17.8. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except for certain management, security, and support positions necessary to prepare the facility for opening, as authorized in the budget approved by the General Assembly.

FEDERAL GRANT MATCHING FUNDS

SECTION 17.9. Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of seven hundred fifty thousand dollars ($750,000) from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

COMPUTER/DATA PROCESSING SERVICES FUNDS

SECTION 17.10. Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for expenses for computer/data processing services if expenditures exceed the Department's continuation budget amount for those services. The Department shall report to the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

MEDIUM CUSTODY ROAD CREW COMPENSATION/COMMUNITY WORK CREWS

SECTION 17.11.(a) Of funds appropriated to the Department of Transportation by this act, the sum of ten million dollars ($10,000,000) per year shall be transferred by the Department of Transportation to the Department of Correction during the 2005-2007 biennium for the actual costs of highway-related labor performed by medium-custody prisoners, as authorized by G.S. 148-26.5. This transfer shall be made quarterly in the amount of two million five hundred thousand dollars ($2,500,000). The Department of Transportation may use funds appropriated by this act to pay an additional amount exceeding the ten million dollars ($10,000,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

SECTION 17.11.(b) The Department of Correction may use up to 39 work crews for Department of Transportation litter control projects. The Department of Transportation shall transfer at least one million three hundred thousand dollars ($1,300,000) per year from the Highway Fund to the Department of Correction during the 2005-2007 biennium to cover the cost of those work crews. Should the two departments determine that the actual cost of operating 39 work crews exceeds that amount, the Department of Transportation shall transfer an additional amount as agreed upon by the two departments and the Office of State Budget and Management.

INMATE CUSTODY AND CLASSIFICATION SYSTEM

SECTION 17.12.(a) The Department of Correction shall review the current inmate custody and classification system, with the assistance of consultants from the National Institute of Corrections. The review shall focus primarily on the custody classification instrument used to assess inmate custody and the policies and practice of overriding the assessed custody level. The review should focus particularly on determining whether the instrument is effective in predicting custody classification, analyzing the current override rate by custody level, and assessing any need for changes in the override policy. The Department should request assistance from the National Institute of Corrections in obtaining (i) a comparison between Department of Correction override rates and policies and those of other states; (ii) suggestions on an acceptable override rate for classification systems; and (iii) any recommendations the NIC may have on the Department's custody classification instrument and override policy.

SECTION 17.12.(b) The Department shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than April 15, 2006.

EXTEND LIMITS OF CONFINEMENT/TERMINALLY ILL AND PERMANENTLY AND TOTALLY DISABLED INMATES

SECTION 17.13. G.S. 148-4 reads as rewritten:

"§ **148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.**

The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by

authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or

(2) Secure a suitable residence for use when released on parole or upon discharge; or

(3) Obtain medical services not otherwise available; or

(4) Participate in a training program in the community; or

(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or

(6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and after-care programs as may be provided for and administered by the Secretary of Correction and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society; or

(7) Be on maternity leave, for a period of time not to exceed 60 days. The county departments of social services are expected to cooperate with officials at the North Carolina Correctional Center for Women to coordinate prenatal care, financial services, and placement of the child; or

(8) Receive palliative care, only in the case of a terminally ill inmate or a permanently and totally disabled inmate that the Secretary finds no longer poses ~~a threat to society,~~a significant public safety risk, and only after consultation with any victims of the inmate or the victims' families. For purposes of this subdivision, the term "terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, that will likely produce death within ~~12 months.~~six months, and that is so debilitating that it is highly unlikely that the inmate poses a significant public safety risk. For purposes of this subdivision, the term "permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical ~~condition.~~condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison, and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk. The Department's medical director shall notify the Secretary immediately when an inmate has been classified as terminally ill and shall provide regular reports on inmates classified as permanently and totally disabled. The Secretary shall act expeditiously in determining whether to extend the limits of confinement under this subdivision upon receiving notice that an inmate has been classified as terminally ill or permanently and totally disabled and, in the case of a terminally ill inmate, the Secretary shall

make a good faith effort to reach a determination within 30 days of receiving notice of the inmate's terminal condition.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45."

REPORT ON INMATE COMMUNITY WORK CREWS AND INMATE LABOR CONTRACTS

SECTION 17.14. The Department of Correction shall report by March 1, 2006, to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the inmate labor contracts and community work programs, identifying total project man-hours provided by inmates and Department of Correction employees to client agencies, the total Department operating costs for these programs, and the benefits of these programs. The report shall also group the man-hour and cost information by the major client groups and estimate the average project cost and average project duration. The report shall also provide suggested administrative procedures for collecting a portion of the cost of inmate work crews and inmate labor contracts and shall include an evaluation regarding the feasibility, advantages, and disadvantages of charging a portion of the costs to local governments and State agencies.

STUDY COST CONTAINMENT OF INMATE HEALTH CARE

SECTION 17.15.(a) The Department of Correction shall study and develop new approaches to reducing the cost of inmate medical services while continuing to provide services necessary to maintain basic health and provide adequate care. In its study, the Department shall consider and report on all of the following:

(1) Methods to decrease the cost of services charged by external medical providers for medical, dental, psychiatric, and other health care services provided to inmates under the custody of the Department of Correction.

(2) The feasibility of a negotiated reimbursement rate for medical services provided by hospitals and other health care providers that does not exceed the rate paid for the same or similar service or diagnostic-related grouping under the (i) Teachers' and State Employees' Comprehensive Major Medical Plan (State Health Plan), (ii) the Medicaid rate, or (iii) other negotiated reimbursement rates.

(3) The potential cost savings to be derived from contracting with a third-party administrator to handle claims and utilization management for external health care delivery expenditures to inmates.

(4) The progress of attempts by the Department of Correction to renegotiate provider reimbursement rates.

(5) The progress made by the Department of Correction in reducing inmate medical costs by further regionalization and consolidation of hospital and physician services and by cost cutting efforts carried out by new inmate medical personnel funded for the 2005-2007 fiscal biennium.

(6) The potential cost/benefit of reducing the number of contract medical personnel and replacing contract staff with permanent Department of Correction medical positions.

(7) The feasibility of partnering with The University of North Carolina Health Care System to provide a managed health care system for inmates.

SECTION 17.15.(b) The Department of Correction shall consult with the Executive Administrator of the State Health Plan, The University of North Carolina Health Care System, and organizations representing medical providers in its efforts to control the cost of medical services for prisoners and to address any issues of concern regarding the provision and administration of inmate medical care.

SECTION 17.15.(c) Notwithstanding G.S. 143-23, if the Department of Correction is unable to achieve the total reduction amount of four million six hundred thousand dollars ($4,600,000) specified in this act for reducing hospital and physician services line items, the Department of Correction may use salary and nonsalary funds from other programs to attain these reductions. The Department of Correction shall report by April 1, 2006, to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on its efforts to achieve the reduction amount and identify the amount and source of funds for any portion of the reduction that is taken from noninmate medical line items.

SECTION 17.15.(d) The Department of Correction shall issue a report detailing its initial study findings to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1, 2006, and present a final report by December 2006 to the General Assembly.

CORRECTION ENTERPRISES LONG-RANGE PLAN/REPLACEMENT OF UMSTEAD LAUNDRY

SECTION 17.16.(a) The Department of Correction, through the Correction Enterprises Program, shall update its long-range business plan to identify alternatives for (i) increasing productivity and expanding markets for current Enterprise products; (ii) increasing the number of inmates employed in Correction Enterprises; and (iii) identifying new or expanded industries that will best meet the goals of training inmates while providing reasonable profits that allow Correction Enterprises to expand industry sites and maintain current sites where appropriate. The study shall include a review of the potential to expand the Prison Industry Enhancement (PIE) Programs with private industry. The Plan shall also identify capital and operating costs for implementing the long-range plan.

The Department of Correction shall submit the long-range business plan required by this section to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

SECTION 17.16.(b) In preparation for the scheduled closing of Umstead Hospital in 2007, the Department of Correction shall develop a plan for the replacement of the Correction Enterprises laundry operation at Umstead Hospital and include that report with the long-range plan required by this section.

STAFFING STUDY OF UNIT MANAGEMENT

SECTION 17.17. The Department of Correction shall conduct an organization and staffing study of unit management in the State prison system, focusing on the 18 prison facilities that use unit management. The Department shall review workload and staffing at each of the prisons and make recommendations for staffing changes and staffing efficiencies. The study shall consider the responsibilities and workloads of custody supervisors and program staff in relation to unit managers and determine whether certain functions should be the responsibility of custody supervisors or program staff.

The Department shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

ENERGY COMMITTED TO OFFENDERS/CONTRACT AND REPORT

SECTION 17.17A. The Department of Correction may continue to contract with Energy Committed To Offenders, Inc., for the purchase of prison beds for minimum security female inmates during the 2005-2007 biennium. Energy Committed To Offenders, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

STUDY CONVERSION TO MINIMUM SECURITY/CLEVELAND CORRECTIONAL CENTER

SECTION 17.18. As part of its development and update of its long-range prison housing plan, the Department of Correction shall study the feasibility of converting Cleveland Correctional Center from medium custody to minimum custody or operating a medium custody facility with a minimum custody component. The Department shall also study the feasibility of expanding Cleveland Correctional Center as a medium or minimum custody facility, or some combination of the two. The Department shall conduct a cost analysis of expansion options, including a determination of possible savings by using inmate labor to assist with construction. The Department of Correction shall report its findings to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

REPORT ON ELECTRONIC MONITORING PROGRAM/USE OF GLOBAL POSITIONING SYSTEMS FOR SEX OFFENDERS

SECTION 17.19.(a) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on its efforts to increase the use of electronic monitoring of sentenced offenders in the community as an alternative to the incarceration of probation violators. The report shall also document the geographical distribution of electronic monitoring use compared to other intermediate sanctions. The Department shall also analyze the reasons for the underutilization of the electronic monitoring program and include its findings in the report.

SECTION 17.19.(b) The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005, on the following:

(1) The Department's evaluation of its 2004 pilot program for monitoring sex offenders and domestic violence offenders using Global Positioning Systems (GPS) technology.

(2) The results of the Request for Proposal issued in the 2004-2005 fiscal year for GPS monitoring of offenders supervised by the Division of Community Corrections.

(3) The Department's recommendations for implementing GPS monitoring of sex offenders, including:

a. An evaluation of the costs and benefits of passive versus active GPS technology.

b. The proposed coverage areas for GPS monitoring and the location of any geographic or technological limitations that prevent statewide coverage.

c. The size and characteristics of the targeted offender population and the proposed number of offenders to be monitored.

d. The contractual and internal costs of the monitoring program.

e. The proposed caseloads for probation officers who would supervise offenders using GPS technology.

The Department shall also explore funding options through grants and other sources, including the possibility of charging a fee to offenders to partially offset the costs of the program. Funds made available for federal grant matching purposes by Section 17.9 of this act may be used to match grants for GPS supervision. The Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on any funds identified.

REPORT ON PROBATION AND PAROLE CASELOADS

SECTION 17.20.(a) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

(1) Data on current caseload averages for Probation Parole Officer I, Probation Parole Officer II, and Probation Parole Officer III positions;

(2) An analysis of the optimal caseloads for these officer classifications;

(3) An assessment of the role of surveillance officers;

(4) The number and role of paraprofessionals in supervising low-risk caseloads;

(5) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004;

(6) The selection of a risk assessment and the resulting distribution of offenders among risk levels; and

(7) Any position reallocations in the previous 12 months, and the reasons for and fiscal impact of those reallocations.

SECTION 17.20.(b) The Department of Correction shall conduct a study of probation/parole officer workload at least biannually. The study shall include

analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

SECTION 17.20.(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1, 2007.

COMMUNITY SERVICE WORK PROGRAM

SECTION 17.21. The Department of Correction shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the integration of the Community Service Work Program into the Division of Community Corrections, including the Department's ability to monitor the collection of offender payments from unsupervised offenders sentenced to community service. The Department shall also report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the average caseloads of Community Service Work Program coordinators, by district, division, and statewide. The report shall also include the money collected, the type and value of the work performed, and the number of offenders in the Community Service Work Program, by type of referral (i.e. parole, supervised probation, unsupervised probation or community punishment, DWI, or any other agency referrals).

REPORTS ON NONPROFIT PROGRAMS

SECTION 17.22.(a) Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 17.22.(b) Summit House shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 17.22.(c) Women at Risk shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the

expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

CRIMINAL JUSTICE PARTNERSHIP PROGRAM

SECTION 17.23.(a) It is the intent of the General Assembly that State Criminal Justice Partnership Program funds not be used to fund case manager positions when those services can be reasonably provided by Division of Community Corrections personnel or by the Treatment Alternatives to Street Crime (TASC) Program in the Department of Health and Human Services.

SECTION 17.23.(b) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

SECTION 17.23.(c) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

SECTION 17.23.(d) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

(1) The amount of funds carried over from the prior fiscal year;

(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

(3) Any counties the Department anticipates will submit requests for new implementation grants;

(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

(6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards; and

(7) An evaluation of whether each sentenced offender program meets program standards developed by the Division of Community Corrections in consultation with the Division of Research and Planning.

SECTION 17.23.(e) G.S. 143B-273.14(c) reads as rewritten:

"(c) When a county receives more than fifty thousand dollars ($50,000) in community-based corrections funds, then that county shall use at least fifty percent (50%) of those funds to develop programs for offenders who receive intermediate punishments. No county shall use more than twenty-five percent (25%) of its funds to serve offenders released from jail prior to trial."

SECTION 17.23.(f) Effective July 1, 2006, G.S. 143B-273.4 reads as rewritten:

"§ **143B-273.4. Eligible population.**

(a) An eligible offender is an adult offender who ~~either is in confinement awaiting trial, or~~ was convicted of a misdemeanor or a felony offense and received a nonincarcerative sentence of an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall ~~be:~~

~~(1)~~ ~~Offenders~~be offenders sentenced to intermediate ~~punishments; and~~

~~(2) Offenders who are appropriate for release from jail prior to trial under the supervision of a pretrial monitoring program.~~ punishments."

SECTION 17.23.(g) G.S. 143B-273.15 reads as rewritten:

"§ **143B-273.15. Funding formula.**

To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

(1) ~~Twenty percent (20%)~~Twenty-five percent (25%) based on a fixed equal dollar amount for each county;

(2) ~~Sixty percent (60%)~~Fifty percent (50%) based on the county share of the State population; and

(3) ~~Twenty percent (20%)~~Twenty-five percent (25%) based on the ~~supervised probation admissions~~ intermediate punishment entry rate for the ~~county.~~county, using the total of the three most recent years of data available divided by the average county population for that same period.

The sum of the amounts in subdivisions (1), (2), and (3) is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds. The data used for this funding formula shall be updated at least once every three years."

SECTION 17.23.(h) For the 2005-2006 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-nine percent (99%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. Funding caps shall be accomplished by the redistribution of three hundred forty-four thousand four hundred ninety-one dollars ($344,491) that was spent on case management services in day reporting centers prior to 2002. No funds shall be used to fund programs that did not participate in the Criminal Justice Partnership Program in fiscal year 2004-2005.

For the 2006-2007 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-five percent (95%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. After determining the capped formula allocations, funds that were used in the 2005-2006 fiscal year for pretrial release programs shall be reallocated among all participating counties using the formula in G.S. 143B-273.15 and dedicated to sentenced offender programs.

SECTION 17.23.(i) Subsection (e) of this section expires July 1, 2006.

REPORT ON INMATES ELIGIBLE FOR PAROLE

SECTION 17.24. The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the current fiscal year and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole. The report should also include a more specific analysis of those inmates who were parole-eligible and assigned to minimum custody classification but not released;

(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2007-2008 fiscal year and by the end of each of the next five fiscal years, beginning with the 2008-2009 fiscal year.

PROVIDE THAT THE TERMS OF THE MEMBERS OF THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION SERVING ON JUNE 30, 2005, EXPIRE ON THAT DATE AND RESTRUCTURE THE COMMISSION TO CONSIST OF ONE FULL-TIME MEMBER AND TWO HALF-TIME MEMBERS

SECTION 17.25.(a) G.S. 143B-267 reads as rewritten:

"§ **143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.**

~~The~~ Effective August 1, 2005, the Post-Release Supervision and Parole Commission shall consist of ~~three~~ one full-time ~~members.~~ member and two half-time members. The three ~~full-time~~ members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of ~~the five members presently~~ any members serving on the Commission on June 30, 2005, shall expire on ~~July 31, 1999.~~ that date. ~~The term of one of the members appointed effective August 1, 1999, shall be for one year. The term of one of the members appointed effective August 1, 1999, shall be for two years. The term of one of the members appointed effective August 1, 1999, shall be for three years. Thereafter, the~~ The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are

appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a ~~full-time~~ member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a ~~full-time~~ member of the Commission to serve as ~~chairman~~ chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The ~~full-time~~ members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

SECTION 17.25.(b) This section becomes effective June 30, 2005.

POST-RELEASE SUPERVISION AND PAROLE COMMISSION/REPORT ON STAFFING REORGANIZATION AND REDUCTION

SECTION 17.26. The Post-Release Supervision and Parole Commission shall report by October 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on a plan for restructuring the organization and operation of the Commission and implementing staff reductions to reflect both declines and changes in workload.

MUTUAL AGREEMENT PAROLE PROGRAM

SECTION 17.27. The Department of Correction and the Post-Release Supervision and Parole Commission shall make a good faith effort to enroll at least twenty percent (20%) of all program-eligible, pre-Structured Sentencing felons in the Mutual Agreement Parole Program by May 1, 2006. The Department shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006, and by March 1 of each subsequent year on the number of inmates actually enrolled in the program, the number of inmates who have been paroled as a result of participation in the program, and the number of inmates who have enrolled but terminated as a result of unsuccessful participation in the program. If the twenty percent (20%) participation goal established by this section has not been reached, the report shall explain why the goal was not realized.

PAROLE ELIGIBILITY REPORT

SECTION 17.28.(a) The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the

General Statutes. The "maximum sentence", for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

SECTION 17.28.(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

(1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.

(2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1) of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

(3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

SECTION 17.28.(c) The Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the results of its analysis by October 1, 2005. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinitiate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall report by February 1, 2006, regarding the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

PAYMENT OF COSTS ASSOCIATED WITH CONDITIONS OF PROBATION

SECTION 17.29. G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable

employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.

A defendant shall not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by this subsection.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

INCREASE BED CAPACITY FOR RESIDENTIAL SUBSTANCE ABUSE TREATMENT

SECTION 17.30. The Department of Correction may adjust the current contract for 100 female residential substance abuse treatment beds to guarantee a one hundred percent (100%) occupancy rate. The Department may use available funds for this contract adjustment if necessary. Any contract adjustments shall be effective as soon as practical but no later than October 1, 2005, and shall extend only through June 30, 2006.

PART XVIII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

ANNUAL EVALUATION OF TARHEEL CHALLENGE PROGRAM

SECTION 18.1. The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

(1) The source of referrals for individuals participating in the Program;
(2) The summary of types of actions or offenses committed by the participants of the Program;
(3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;
(4) The number of individuals who successfully complete the Program; and
(5) The number of participants who commit offenses after completing the Program.

VICTIMS ASSISTANCE NETWORK REPORT

SECTION 18.2. The Department of Crime Control and Public Safety shall report on the expenditure of funds allocated pursuant to this section for the Victims Assistance Network. The Department shall also report on the Network's efforts to gather data on crime victims and their needs, act as a clearinghouse for crime victims' services, provide an automated crime victims' bulletin board for subscribers, coordinate and support activities of other crime victims' advocacy groups, identify the training needs of crime victims' services providers and criminal justice personnel, and coordinate training for these personnel. The Department shall submit its report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by December 1 of each year of the biennium.

PART XIX. DEPARTMENT OF ADMINISTRATION

CONTINUATION OF THE STUDY OF ADVOCACY PROGRAMS IN THE DEPARTMENT OF ADMINISTRATION

SECTION 19.1. The Secretary of the Department of Administration, in collaboration with appropriate entities that concentrate on public policy and business management, shall continue the study that was completed during the 2003-2004 fiscal year of the functions of the advocacy programs that are housed in the Department of Administration to determine the appropriate organizational placement of the programs within State government. The study shall include both the advocacy and service functions of the Division of Veterans Affairs, the Council for Women and the Domestic Violence Commission, the Commission of Indian Affairs, the Governor's Advocacy Council for Persons with Disabilities, the Human Relations Commission, and the Youth Advocacy and Involvement Office. The study shall also consider whether the functions of the programs could be more efficiently and effectively performed by an appropriate nonprofit organization. The Secretary shall report the findings and recommendations to

the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by April 1, 2006.

VETERANS SCHOLARSHIPS PARTIALLY FUNDED FROM ESCHEAT FUND

SECTION 19.2. In accordance with G.S. 116B-7(b), there is appropriated from the Escheat Fund to the Department of Administration the sum of four million two hundred ninety-seven thousand five hundred forty-four dollars ($4,297,544) for the 2005-2006 fiscal year and four million three hundred fifty-eight thousand forty-six dollars ($4,358,046) for the 2006-2007 fiscal year.

STATE VETERANS CEMETERIES

SECTION 19.3. The Department of Administration may use funds credited to the Veterans Burial Fund for the 2005-2007 biennium to cover costs incurred as a result of burials on Saturday or Sunday.

ALLOCATION OF PETROLEUM VIOLATION ESCROW FUNDS

SECTION 19.4.(a) There is appropriated from funds and interest that remain in the Special Reserve for Oil Overcharge Funds to the Department of Health and Human Services the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year to be allocated for the Weatherization Assistance Program.

SECTION 19.4.(b) The balance of the funds and interest that remain in the Special Reserve for Oil Overcharge Funds after the allocation made pursuant to subsection (a) of this section is appropriated to the Department of Administration for the 2005-2006 fiscal year to be allocated for projects approved by the State Energy Policy Council.

STATE FLEETS SHALL DEVELOP AND IMPLEMENT PLANS TO IMPROVE USE OF ALTERNATIVE FUELS, SYNTHETIC LUBRICANTS, AND EFFICIENT VEHICLES

SECTION 19.5.(a) All State agencies, universities, and community colleges that have State-owned vehicle fleets shall develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by January 1, 2010. Before implementation of any plan, all affected agencies shall report their plan to the Department of Administration. The Department of Administration shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through the use of biodiesel, ethanol, synthetic oils or lubricants, other alternative fuels, the use of hybrid electric vehicles, other fuel-efficient or low-emission vehicles, or additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long-term cost-benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies.

SECTION 19.5.(b) For the purposes of this section, a State-owned vehicle fleet consists of more than 10 motor vehicles, as defined by G.S. 20-4.01, that are designed for highway use and titled to one of the aforementioned entities. Specialty

vehicles, as defined by G.S. 20-4.01, that are used for educational purposes, and vehicles exempted under U.S. Executive Order 13149 are subject to ten percent (10%) reductions.

SECTION 19.5.(c) Agencies shall report by September 1, 2006, and annually thereafter on September 1, to the Department of Administration on the efforts undertaken to achieve the reductions. The Department of Administration shall compile and forward a report to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter on November 1, on the agencies' progress in meeting their plans.

PART XIX-A. DEPARTMENT OF CULTURAL RESOURCES

TRYON PALACE HISTORIC SITES AND GARDENS FUND

SECTION 19A.1. Article 2 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-21.1. Tryon Palace Historic Sites and Gardens Fund.**

(a) Fund. – The Tryon Palace Historic Sites and Gardens Fund is hereby created as a special and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be used for repair, renovation, expansion, and maintenance at Tryon Palace Historic Sites and Gardens.

(b) Disposition of Fees. – All entrance fee receipts shall be credited to the Tryon Palace Historic Sites and Gardens Fund.

(c) The Tryon Palace Commission shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Tryon Palace Historic Sites and Gardens Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

PART XIX-B. GENERAL ASSEMBLY

PRINCIPAL CLERKS' COMPENSATION

SECTION 19B.1. G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ninety thousand five hundred fourteen dollars ($90,514) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

PART XX. OFFICE OF THE GOVERNOR

HOUSING FINANCE AGENCY HOME MATCHING FUNDS

SECTION 20.1.(a) Funds appropriated in this act to the Housing Finance Agency for the federal HOME Program shall be used to match federal funds appropriated for the HOME Program. In allocating State funds appropriated to match federal HOME Program funds, the Agency shall give priority to HOME Program projects, as follows:

(1) First priority to projects that are located in counties designated as Tier One, Tier Two, or Tier Three Enterprise Counties under G.S. 105-129.3; and

(2) Second priority to projects that benefit persons and families whose incomes are fifty percent (50%) or less of the median family income for the local area, with adjustments for family size, according to the latest figures available from the United States Department of Housing and Urban Development.

The Housing Finance Agency shall report to the Joint Legislative Commission on Governmental Operations by April 1 of each year concerning the status of the HOME Program and shall include in the report information on priorities met, types of activities funded, and types of activities not funded.

SECTION 20.1.(b) If the United States Congress changes the HOME Program such that matching funds are not required for a given program year, then the Agency shall not spend the matching funds appropriated under this act for that program year.

SECTION 20.1.(c) Funds appropriated in this act to match federal HOME Program funds shall not revert to the General Fund on June 30, 2006, or on June 30, 2007.

HOUSING FINANCE AGENCY SHALL CONTINUE AND EXPAND THE NORTH CAROLINA HOME PROTECTION PILOT PROGRAM AND LOAN FUND

SECTION 20.2.(a) The North Carolina Housing Finance Agency shall continue, develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Program shall include all counties that had greater than seven percent (7%) average unemployment in the 2004-2005 fiscal year.

(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

(4) Designate, approve, and fund nonprofit counseling agencies in counties participating in the Program to be available to assist the Agency in implementing the provisions of this section, and to provide services such as direct mortgagee negotiations on behalf of unemployed workers, and to process loan applications for the Agency.

(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local

nonprofit counseling agencies, and may apply for loans from the Agency.

(6) No later than April 1, 2006, report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on the effectiveness of the Program in accomplishing its purposes, and provide any other information the Agency determines is pertinent or that the General Assembly requests.

SECTION 20.2.(b) As used in this section, the following definitions apply:

(1) Agency. – The North Carolina Housing Finance Agency.

(2) Counseling agency. – A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

(3) Mortgage. – An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

(4) Mortgagee. – The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

SECTION 20.2.(c) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following:

(1) Accelerate the maturity of any mortgage obligation covered under this section.

(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

(3) Take possession of any security of the mortgagor for the mortgage obligation.

(4) Procure or receive a deed in lieu of foreclosure.

(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within five business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the

mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

SECTION 20.2.(d) Rule Making. – Solely with respect to the adoption of procedures for the pilot program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.
(2) Accept oral and written comments on the proposed procedures.
(3) Hold at least one public hearing on the proposed procedures.

SECTION 20.2.(e) Any funds appropriated under Section 20A.1 of S.L. 2004-124 that have not been encumbered shall be used for the expansion of the program to additional counties as provided by this section.

SECTION 20.2.(f) This section applies only to the 2005-2006 fiscal year.

PART XX-A. INFORMATION TECHNOLOGY

MULTIYEAR MAINTENANCE CONTRACTS

SECTION 20A.1.(a) Notwithstanding the cash management provisions of G.S. 147-86.11, the State Controller may authorize the Office of Information Technology Services (ITS) to purchase not more than four infrastructure maintenance agreements for periods not exceeding three years where the terms of those maintenance agreements require payment of the full purchase price at the beginning of the maintenance period. The State Controller shall not authorize the agreements authorized by this section unless all of the following conditions are met:

(1) The proposed infrastructure maintenance agreement is entered into after June 30, 2005, and before July 1, 2007.
(2) The State Controller receives conclusive evidence that the proposed infrastructure agreement would be more cost effective than any similar agreement that complies with G.S. 147-86.11.
(3) The purchase of the proposed maintenance agreement complies in all other respects with applicable statutes and rules.
(4) The proposed infrastructure maintenance agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by other reasonable means that have legally binding effect.

SECTION 20A.1.(b) The Office of State Budget and Management (OSBM) shall ensure that the savings from any authorized multiyear infrastructure maintenance contract will be included in ITS's calculation of rates before OSBM annually approves the proposed rates.

SECTION 20A.1.(c) OSBM shall report on any budget impacts resulting from the multiyear contracts and provide full justification for any authorizations granted under this section to the Chairs of the Senate and House of Representatives Appropriations Committees and to the Fiscal Research Division annually on or before May 1.

PART XXI. DEPARTMENT OF INSURANCE

INSURANCE REGULATORY FUND TRANSFER TO GENERAL FUND

SECTION 21.1. The Commissioner of Insurance shall transfer funds quarterly from the Insurance Regulatory Fund to the General Fund to repay the funds appropriated to the Department of Insurance from the General Fund for each fiscal year, plus accrued interest at a rate determined by the State Treasurer.

STRENGTHEN REQUIREMENTS FOR ISSUING BUILDING PERMITS

SECTION 21.2. The North Carolina Code Officials Qualification Board shall take steps to ensure that building inspectors enforce the requirements of G.S. 87-14.

PART XXII. DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE DEBT FEE FOR TAXPAYER LOCATER SERVICES AND COLLECTION

SECTION 22.1.(a) G.S. 105-243.1(e) reads as rewritten:

"(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

The Department may apply the fee proceeds for the following purposes:

(1) To pay contractors for collecting overdue tax debts under subsection (b) of this section.

(2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.

(3) To pay for taxpayer locater services, not to exceed one hundred thousand dollars ($100,000) a year.

(4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts.

(5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.

(6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts."

SECTION 22.1.(b) G.S. 105-243.1(f) reads as rewritten:

"(f) Reports. – The Department must report semiannually to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its efforts to collect tax debts. Each report must include a breakdown of the amount and age of tax debts collected by collection agencies on contract, the amount and age of tax debts collected by the Department through warning letters, and the amount and age

of tax debts otherwise collected by Department personnel. The report must itemize collections by type of tax. Each report must also include a long-term collection plan, a timeline for implementing each step of the plan, a summary of steps taken since the last report and their results, and any other data requested by the Commission or the Committee.

The Department must report by April 1, 2006, and annually thereafter, to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly on the use of the fee proceeds for collecting overdue tax debts."

POSITIONS FOR REVENUE TAX EVASION PROJECT

SECTION 22.3. The 10 time-limited positions established in the Fuel Tax Compliance Division of the Department of Revenue for the Revenue Tax Evasion Project in S.L. 2004-124 are converted to permanent positions.

REPORT ON ENHANCED COMPLIANCE, ENFORCEMENT, AND COLLECTION EFFORTS

SECTION 22.4. On or before April 1, 2006, the Department must report to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its enhanced compliance, enforcement, and collection efforts. The report must include the following:

(1) A detailed description of enhanced compliance, enforcement, and collection programs and methodologies and a detailed accounting of additional revenues collected as a result of each of those specific programs and methodologies.

(2) An analysis of the effectiveness and cost-efficiency of the various programs and methodologies with respect to each type of tax.

(3) A description of efforts to coordinate these enhanced compliance, enforcement, and collection efforts with existing compliance and collection efforts and recommendations for streamlining these various efforts.

(4) Recommendations for specific, nonbudgetary legislative actions to further enhance compliance, enforcement, and collection efforts.

PROPERTY TAX COMMISSION PER DIEM

SECTION 22.5.(a) G.S. 105-288(d) reads as rewritten:

"(d) Expenses. – The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary ~~of two hundred dollars ($200.00) a day~~as provided for by the Commission when hearing cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid as provided in G.S. 105-501."

SECTION 22.5.(b) This section becomes effective September 1, 2005.

COLLECTION ASSISTANCE FEE

SECTION 22.6.(a) G.S. 105-243.1(d) reads as rewritten:

"(d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice required by this subsection is

mailed to the taxpayer. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed if the tax debt is not paid in full within 30 days after the date the fee notice was mailed to the taxpayer. The Department may not mail the fee notice earlier than 60 days after the notice of final assessment for the tax debt was mailed to the taxpayer. The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.

The amount of the collection assistance fee is the actual cost of collection, not to exceed twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue."

SECTION 22.6.(b) This section becomes effective October 1, 2005, and applies to fees collected on or after that date.

PART XXIII. SECRETARY OF STATE

SECRETARY OF STATE TO REASSIGN VACANT POSITION

SECTION 23.1. The Secretary of State shall reassign position 3222-0000-0000-361 from the Uniform Commercial Code Division to its General Administration Division to assist with investigations of trademark violations and training for other law enforcement personnel in the State and with investigations of violations of the Charitable Solicitation Licensing Act. The Secretary shall report to the Chairs of the Appropriations Subcommittees on General Government of the Senate and House of Representatives by December 1, 2005.

PART XXIII-A. STATE BOARD OF ELECTIONS

AMEND THE STATUTES CONCERNING THE NORTH CAROLINA PUBLIC CAMPAIGN FUND AND RELATED STATUTES

SECTION 23A.1.(a) G.S. 84-34, as amended by S.L. 2005-237, reads as rewritten:

"§ **84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed three hundred dollars ($300.00), plus a surcharge of fifty dollars ($50.00) for the implementation of Article 22D of Chapter 163 of the General Statutes, and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars ($30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the

secretary-treasurer on the order of the Council. The fifty-dollar ($50.00) surcharge shall be sent on a monthly schedule to the State Board of Elections. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

SECTION 23A.1.(b) G.S. 105-41(a)(1) reads as rewritten:

"(1) An attorney-at-law. ~~In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars ($50.00) to support the North Carolina Public Campaign Financing Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.~~"

SECTION 23A.1.(c) G.S. 163-278.63(b) reads as rewritten:

"(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign ~~Financing~~ Fund by individual taxpayers pursuant to G.S. 105-159.2.

~~(3) Any contributions made by attorneys in accordance with G.S. 105-41.~~

(4) Public Campaign ~~Financing~~ Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign ~~Financing~~ Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign ~~Financing~~ Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(7) Money collected from the fifty-dollar ($50.00) surcharge on attorney membership fees in G.S. 84-34."

SECTION 23A.1.(d) Wherever the term "Public Campaign Financing Fund" appears in the General Statutes, it shall read "Public Campaign Fund."

SECTION 23A.1.(e) Subsections (a), (b), and (c) of this section become effective January 1, 2006, and apply to the membership fees due for 2006. The remainder of this section is effective when it becomes law.

HAVA FUNDS FOR TRAINING

SECTION 23A.2.(a) G.S. 163-82.28 reads as rewritten:

"§ **163-82.28. The HAVA Election Fund.**

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement ~~HAVA.~~ HAVA and for purposes permitted by HAVA to comply with State law."

SECTION 23A.2.(b) The State Board of Elections may use a portion of the funds in the HAVA Election Fund that have been allocated for the purchase of voting systems, for the 2005-2006 fiscal year, for its cost of facilitating the training and support of the voting systems utilized by the counties as required by Senate Bill 223, 2005 Regular Session.

SECTION 23A.2.(c) The State Board of Elections shall develop a plan for facilitating the training and support of the voting systems utilized by the counties. The State Board of Elections shall report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on its plan as well as any additional funding requirements by April 1, 2006.

SECTION 23A.2.(d) Subsections (b) and (c) of this section are effective only if Senate Bill 223, 2005 Regular Session, becomes law.

STATE BOARD OF ELECTIONS APPOINTMENTS

SECTION 23A.3. G.S. 163-19 reads as rewritten:

"§ **163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.**

All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party. The Governor ~~shall~~ may appoint the members from a list of nominees submitted to him by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board of Elections. Each party chairman shall submit a list of five nominees who are affiliated with that political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor ~~shall~~ may fill the vacancy from a list of three nominees submitted to him by the State party chairman of the political party that nominated the vacating member as provided by the preceding paragraph. The three nominees must be affiliated with that political party.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections."

PART XXIV. OFFICE OF STATE BUDGET AND MANAGEMENT

NC HUMANITIES COUNCIL

SECTION 24.1. The North Carolina Humanities Council shall:

(1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
   b. State fiscal year 2004-2005 itemized expenditures and fund sources;
   c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
   d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

(2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
   b. State fiscal year 2005-2006 itemized expenditures and fund sources;
   c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
   d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.

(3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

PART XXV. OFFICE OF THE STATE CONTROLLER

OVERPAYMENTS AUDIT

SECTION 25.1.(a) During the 2005-2007 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in the Special Reserve Account 24172.

SECTION 25.1.(b) For each fiscal year of the 2005-2007 biennium, two hundred thousand dollars ($200,000) of the funds transferred from the Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

SECTION 25.1.(c) All funds available in the Special Reserve Account 24172 on July 1 of each year of the 2005-2007 biennium are transferred to the General Fund on that date.

SECTION 25.1.(d) Any unobligated funds in the Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly in the 2006 Regular Session of the 2005 General Assembly.

SECTION 25.1.(e) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account 24172 and the disbursement of that revenue.

PART XXVII. DEPARTMENT OF THE STATE TREASURER

REPORT OF THE STATUS OF THE TECHNOLOGY INFRASTRUCTURE ENHANCEMENTS

SECTION 27.1. The Department of State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees for the Senate and the House of Representatives on the status of the replacement of the multitude of information technology systems with an integrated system for all the retirement plans and other programs administered by the Retirement Systems Division. The Department shall report semiannually by October 1 and April 1 until the enhancements are fully implemented.

STAFFING ANALYSIS FOLLOW-UP

SECTION 27.2.(a) The Office of State Budget and Management shall conduct semiannual follow-up analyses to the Staffing Analysis that was completed in April 2003 on the Retirement Systems Division within the Department of State Treasurer by October 1 and April 1 of each year to assure that the staffing levels remain appropriate. The semiannual analyses shall be conducted throughout the implementation of the enhancements to the information technology infrastructure within the Retirement Systems Division that were authorized by this act. The follow-up analyses shall also continue for a reasonable time after the completion of the enhancements to ensure that

the staffing levels are adjusted based on the increased efficiency provided by the enhancements.

SECTION 27.2.(b) The Retirement Systems Division shall maintain monthly workload statistics and productivity data for the various functions within the Division. The Department of State Treasurer shall report the workload statistics and productivity data to the Fiscal Research Division and to the Office of State Budget and Management on a quarterly basis.

TREASURER REPORT ON STATE INVESTMENT OFFICER POSITION INCENTIVE BONUS

SECTION 27.3. G.S. 147-69.3 is amended by adding a new subsection to read:

"(i1) The State Treasurer shall report the incentive bonus paid to the Chief Investment Officer to the Joint Legislative Commission on Governmental Operations by October 1 of each year."

PART XXVIII. DEPARTMENT OF TRANSPORTATION

REMOVE GOV OPS CONSULTATION ON FEDERAL-AID ACTS

SECTION 28.1. G.S. 136-44.2 reads as rewritten:

"§ **136-44.2. Budget and appropriations.**

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, urban, and State parks road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits. The State parks system shall include all State parks roads and parking lots which are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first ~~consulted with~~ reported to the Joint Legislative Commission on Governmental

Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system."

TRANSPORTATION SERVICES FOR TRADE SHOWS

SECTION 28.2. The Department of Transportation, from funds available for public transportation in this act, may use up to one million two hundred thousand dollars ($1,200,000) in each year of the biennium for transportation services for annual or semiannual trade shows of international significance. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee, annually on or before March 1, on the use of these funds.

CASH-FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS.

SECTION 28.3.(a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2007-2008	$1,551.1 million
For Fiscal Year 2008-2009	$1,593.0 million
For Fiscal Year 2009-2010	$1,647.9 million
For Fiscal Year 2010-2011	$1,716.1 million

SECTION 28.3.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2007-2008	$1,136.9 million

For Fiscal Year 2008-2009	$1,186.4 million
For Fiscal Year 2009-2010	$1,229.6 million
For Fiscal Year 2010-2011	$1,283.2 million

SMALL CONSTRUCTION AND CONTINGENCY FUNDS

SECTION 28.4. Of the funds appropriated in this act to the Department of Transportation:

(1) Twenty-one million dollars ($21,000,000) shall be allocated in each fiscal year for small construction projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Board of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.

(2) Fifteen million dollars ($15,000,000) in fiscal year 2005-2006 and fifteen million dollars ($15,000,000) in fiscal year 2006-2007 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

USE OF EXCESS OVERWEIGHT/OVERSIZE FEES

SECTION 28.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-119.1. Use of excess overweight and oversize fees.**

Funds generated by overweight and oversize permit fees in excess of the cost of administering the program, as determined pursuant to G.S. 20-119(e), shall be used for highway and bridge maintenance required as a result of damages caused from overweight or oversize loads."

FUNDS FOR UNSAFE OR OBSOLETE FIELD FACILITIES

SECTION 28.6. Of the funds appropriated in this act to the Department of Transportation, the Department may use funds not to exceed seventy-five hundredths of one percent (.75%) for maintenance and construction programs for major repair, renovation, or replacement of its field facilities that fail to meet safety standards or that are obsolete for current or future use. Prior to expending these funds, the Department shall submit its proposed budget for these expenditures to the Senate Appropriations Subcommittee on Transportation, the House of Representatives Appropriations

Subcommittee on Transportation, and the Joint Legislative Transportation Oversight Committee each year.

STATE USE OF NORTH CAROLINA RAILROAD DIVIDENDS

SECTION 28.7. G.S. 124-5.1(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company received by the State shall be applied to reduce the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina Railroad Company received by the State shall be used by the Department of Transportation for the improvement of the property of the North Carolina Railroad Company as recommended and approved by the Board of Directors of the North Carolina Railroad Company. The improvements may include the following project types:

(1) Railroad and industrial track rehabilitation.
(2) Railroad signal and grade crossing protection.
(3) Bridge improvements.
(4) Corridor protection.
(5) Industrial site acquisition."

ANALYSIS AND APPROVAL OF RULES, POLICIES, OR GUIDELINES AFFECTING DEPARTMENT OF TRANSPORTATION PROJECTS

SECTION 28.8.(a) G.S. 150B-21.4 is amended by adding a new subsection to read:

"(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1)."

SECTION 28.8.(b) Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ **136-44.7C. Analysis and approval of Department of Transportation environmental policies or guidelines affecting transportation projects.**

(a) Analysis Required. – The Department of Transportation shall conduct an analysis of any proposed environmental policy or guideline adopted by the Department that affects Department of Transportation projects to determine if the policy or guideline will result in an increased cost to Department of Transportation projects.

(b) Report of Analysis; Approval of Policy or Guideline Required. – The analysis of a proposed policy or guideline required by subsection (a) of this section shall be reported to the Board of Transportation at least 30 days prior to the proposed effective

date of the policy or guideline, and shall not go into effect until approved by the Board of Transportation."

DEPARTMENT OF TRANSPORTATION PRODUCTIVITY PILOT PROGRAMS

SECTION 28.9.(a) The Department of Transportation may continue the productivity pilot programs in the road oil and bridge inspection units implemented under Section 29.3 of S.L. 2003-284. The Department of Transportation may expend up to one-half of one percent (.50%) of the budget allocation for these programs for employee incentive payments to maintain the increased efficiency and productivity under these programs.

SECTION 28.9.(b) The Department of Transportation may establish two additional pilot programs to test incentive pay for employees as a means of increasing and maintaining efficiency and productivity.

One of the new pilot programs shall involve the Pavement Markings Unit. The other pilot program may be selected by the Department of Transportation. Up to one-half of one percent (.50%) of the budget allocation for these programs may be used to provide employee incentive payments.

Incentive payments shall be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs. Pilot programs implemented under this subsection shall last no more than two years.

The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on the pilot programs developed under this subsection at least 30 days prior to their implementation.

DEPARTMENT OF TRANSPORTATION PERFORMANCE-BASED CONTRACTS

SECTION 28.10. The Department of Transportation may implement up to two performance-based contracts for routine maintenance and operations, exclusive of resurfacing. Selection of firms to perform this work shall be made using a best-value procurement process.

Prior to any advertisement for a proposed project, the Department shall report to the Joint Legislative Transportation Oversight Committee on the contractor selection criteria to be used.

DEPARTMENT OF TRANSPORTATION REORGANIZATION

SECTION 28.11.(a) The Secretary of Transportation shall transfer the Program Development branch, as it existed on May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the Chief Financial Officer of the Department of Transportation.

SECTION 28.11.(b) The Secretary of Transportation shall transfer the Transportation Planning branch, as it existed on May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

SECTION 28.11.(c) The Secretary of Transportation shall transfer the Project Development and Environmental Analysis branch, as it existed May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

SECTION 28.11.(d) In fiscal year 2005-2006, the Department may fill up to 196 existing or vacant positions in the Project Development and Environmental Analysis branch.

SECTION 28.11.(e) The Department of Transportation shall study the current labor market and shall make competitive salary offers to prospective employees for specialized positions that are difficult to fill within the Project Development and Environmental Analysis branch and make salary adjustments for current employees that are in positions that are difficult to fill within the Project Development and Environmental Analysis branch. Salaries within the branch shall be consistent with current State compensation and salary administration polices and shall fall within minimum and maximum allowable salary ranges established for positions in the branch.

SECTION 28.11.(f) Notwithstanding G.S. 126-4(10), or any other provisions of law to the contrary, the Department shall develop an incentive pay pilot program for employees of the Project Development and Environmental Analysis branch. This program shall utilize incentive pay as a means to recognize and reward increased efficiency and productivity, and such payments shall be based on quantifiable measures. The Department shall report to the Joint Legislative Transportation Oversight Committee on the incentive pay pilot program no later than March 30, 2006. This provision does not authorize the implementation of an incentive pay program.

CONTINUING AVIATION APPROPRIATIONS

SECTION 28.12. G.S. 136-16.4 reads as rewritten:

"§ **136-16.4. Continuing aviation appropriations.**

~~There is appropriated from the General Fund to the Department of Transportation the sum of eight million four hundred thousand dollars ($8,400,000) for fiscal year 1993-94 and the sum of eight million nine hundred thousand dollars ($8,900,000) for fiscal year 1994-95.~~ There is appropriated from the Highway Fund to the Department of Transportation the sum of eleven million two hundred eighty-four thousand one hundred ninety-eight dollars ($11,284,198) for fiscal year 2005-2006 and the sum of twelve million nine hundred forty-five thousand sixty-six dollars ($12,945,066) for fiscal year 2006-2007. Each subsequent fiscal year, there is appropriated from the ~~General Fund~~ Highway Fund to the Department of Transportation the amount appropriated by this section to the Department of Transportation for the preceding fiscal year, plus or minus the percentage of the amount by which the collection of State sales and use taxes increased or decreased during the preceding fiscal year. The Department of Transportation may use funds appropriated under this section only for aviation purposes."

TRANSITIONAL TRAINING FOR MOTOR CARRIER ENFORCEMENT OFFICERS

SECTION 28.13. The North Carolina State Highway Patrol is authorized to complete transitional training for all Motor Carrier Enforcement Officers to become State Troopers. The State Highway Patrol may fill any Motor Carrier Enforcement Officer vacancies necessary to ensure the mission of the State Highway Patrol to enforce the Motor Carrier Laws. This transition from Motor Carrier Enforcement Officer to State Trooper shall not relieve the State Highway Patrol of the responsibility of ensuring that all Motor Carrier Enforcement Officer positions and any positions that are transitioned to State Trooper are dedicated to motor carrier

enforcement duties including, but not limited to, permanent weigh station operations, motor carrier inspections, and secondary road checking stations and enforcement.

DEPARTMENT OF TRANSPORTATION AUTHORITY TO PROVIDE WAY-FINDING SIGNS FOR THE ROANOKE VOYAGES CORRIDOR COMMISSION AND THE BLUE RIDGE NATIONAL HERITAGE AREA PARTNERSHIP

SECTION 28.14.(a) Chapter 1194 of the 1981 Session Laws is amended by adding a new section that reads:

"**Sec. 7.2.** At the request of the Roanoke Voyages Corridor Commission, the Department of Transportation may manufacture and install, on Roanoke Island and up to 30 miles off the island, way-finding signs that, by color, design, and lettering, do not comply with normal transportation signage standards. These signs shall be used to identify and give directions to historic, educational, and cultural attractions on the island. The Department of Transportation shall not erect any signage that would be impracticable, unfeasible, or that would result in an unsafe or hazardous condition."

SECTION 28.14.(b) At the request of the Blue Ridge National Heritage Area Partnership, as established by Public Law 108-108, Title I, Section 140(d)(3), the Department of Transportation may manufacture and install way-finding signs that, by color, design, and lettering, do not comply with normal transportation signage standards. Signage throughout the 25-county area, as defined in Public Law 108-108, Title I, Section 140(d)(2), of the Blue Ridge National Heritage Area shall be used to identify and give directions to historic, educational, and cultural attractions. The Department of Transportation shall not erect any signage that would be impracticable, unfeasible, or that would result in an unsafe or hazardous condition.

REVENUE TAX EVASION PROJECT

SECTION 28.15. Of funds appropriated to Highway Trust Fund Administration, the sum of five hundred forty-eight thousand six hundred thirty-three dollars ($548,633) for the 2005-2006 fiscal year and the sum of four hundred seventy thousand seven hundred one dollars ($470,701) for the 2006-2007 fiscal year shall be used to establish and support nine positions in the Department of Revenue, Motor Fuels Tax Division, to fully implement the Revenue Tax Evasion Project.

VISITOR CENTER FUNDS

SECTION 28.16. G.S. 20-79.7(c)(2) reads as rewritten:

"(c) Use of Funds in Special Registration Plate Account. –

…

(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is annually appropriated from the Special Registration Plate Account the sum of ~~nine hundred thousand dollars ($900,000)~~ one million dollars ($1,000,000) to provide operating assistance for the Visitor Centers:

a. on U.S. Highway 17 in Camden County, ($100,000);
b. on U.S. Highway 17 in Brunswick County, ($100,000);
c. on U.S. Highway 441 in Macon County, ($100,000);
d. in the Town of Boone, Watauga County, ($100,000);
e. on U.S. Highway 29 in Caswell County, ($100,000);

f. on U.S. Highway 70 in Carteret County, ($100,000);
g. on U.S. Highway 64 in Tyrrell County, ($100,000);
h. at the intersection of U.S. Highway 701 and N.C. 904 in Columbus County, ($100,000); ~~and~~
i. on U.S. Highway 221 in McDowell County, ~~($100,000).~~($100,000); and
j. on Staton Road in Transylvania County, ($100,000)."

MODIFY GLOBAL TRANSPARK DEBT

SECTION 28.17. G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144 and Section 2 of S.L. 2005-201, reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

…

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than ~~August 31, 2005.~~ October 1, 2007. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

BEAVER DAMAGE CONTROL PROGRAM FUNDS

SECTION 28.18. Of funds available to the Department of Transportation for maintenance, the sum of three hundred thousand dollars ($300,000) for the 2005-2006 fiscal year and the sum of three hundred thousand dollars ($300,000) for the 2006-2007 fiscal year shall be used to provide the State share necessary to support the beaver damage control program established in G.S. 113-291.10, provided the sum of at least twenty-five thousand dollars ($25,000) in federal funds is available each fiscal year of the biennium to provide the federal share.

REPORT ON STORMWATER PILOT PROJECT

SECTION 28.19. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by August 1, 2005, on its plan to clean up ocean outfalls in accordance with Section 30.20 of S.L. 2004-124.

CAPITAL IMPROVEMENTS TO TRANSPORTATION MUSEUM

SECTION 28.20. The Secretary of Transportation shall make capital improvements to the Back Shop at the North Carolina Transportation Museum. The

Secretary may spend up to two million dollars ($2,000,000) of funds available in fiscal year 2005-2006 and may spend up to three million dollars ($3,000,000) of funds available in fiscal year 2006-2007 for this purpose.

ESTABLISHING TOLLWAYS ON FEDERALLY FUNDED HIGHWAYS DESIGNATED AS INTERSTATES

SECTION 28.21.(a) The North Carolina Department of Transportation shall apply to the United States Department of Transportation for a permit to allow tolling on established interstate highways in North Carolina. The Department shall set Interstate 95 as the priority project when applying for any permits.

SECTION 28.21.(b) Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-89.198. Authority to toll existing interstate highways.**

(a) General. – Notwithstanding any other provision of this Article, the Authority may collect tolls on any existing interstate highway for which the United States Department of Transportation has granted permission by permit, or any other lawful means, to do so. The revenue generated from the collected tolls shall be used by the Authority to repair and maintain the interstate on which the tolls were collected. These revenues shall not be used to repair, maintain, or upgrade any State primary or secondary road adjacent to or connected with the interstate highways.

(b) Method. – The Authority shall establish toll locations on the permitted interstate highway in accordance with federal guidelines. Toll locations shall be erected at or near the borders of the State and at such other locations that are not impracticable, unfeasible, or that would result in an unsafe or hazardous condition.

(c) Severability. – If any provision of this section or its application is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable."

STUDY ONLINE DEALER REGISTRATION ENHANCEMENT

SECTION 28.22.(a) The Joint Legislative Transportation Oversight Committee shall study the feasibility and cost of enhancing the Online Dealer Registration System to allow motor vehicle dealers the option of performing titling and registration services on-site. This study shall determine whether the Division of Motor Vehicles or some third-party vendor would be better able to provide these services including crash data on each vehicle being registered. The Joint Legislative Transportation Oversight Committee may hire an outside consultant in conducting this study.

SECTION 28.22.(b) Of the funds appropriated by this act for the enhancement of the Online Dealer Registration System, no expenditure shall be made before November 1, 2005. Not less than 30 days prior to any expenditure being made, the Division shall report to the Joint Legislative Transportation Oversight Committee a detailed plan outlining the planned expenditures, expected results, completion date, and the proposed date of implementing the enhanced system.

MOVING AHEAD PROJECTS

SECTION 28.23.(a) In addition to the planned expenditures of one hundred fifty-four million dollars ($154,000,000) in the 2005-2006 fiscal year for the construction of highway projects authorized by G.S. 136-176(a3)(1), as amended by

Section 30.3(b) of S.L. 2004-124, the Department of Transportation may expend an additional forty-four million dollars ($44,000,000) during the 2005-2006 fiscal year to accelerate the construction of those highway projects. Project selection pursuant to this section shall be based on identified and documented need. Funds expended pursuant to this section shall be distributed in accordance with the distribution formula in G.S. 136-17.2A. No funds shall be expended pursuant to this section on any project that does not meet Department of Transportation standards for road design, materials, construction, and traffic flow. Nothing in this section shall be construed to increase the total amount of funds that may be obligated for these projects pursuant to G.S. 136-176(a3), as amended by Section 30.3(b) of S.L. 2004-124.

SECTION 28.23.(b) The Department shall design and construct an extension of an existing roadway facility in Wake County linking U.S. Highway 70 and S.R. 1839, Leesville Road. The Department may enter into a Public-Private, municipal agreement, or other appropriate method to fund and construct this facility.

SECTION 28.23.(c) Of the increased funds for general maintenance appropriated to the Department of Transportation by this act, up to six million dollars ($6,000,000) shall be used for road improvements to Lawyers Road between Highway 51 and Stevens Mill Road, located in Mecklenburg and Union Counties. Improvements shall include, but are not limited to:

(1) Widening on Lawyers Road to four lanes between Bain School Road and Stevens Mill Road.
(2) Construction of turn lanes along Lawyers Road, Bain School Road, Thompson Road, Allen Black Road, and Stevens Mill Road.
(3) Intersection realignments and improvements at Thompson Road, Bain School Road, and Lawyers Road.
(4) Traffic signalization along Lawyers Road.

SECTION 28.23.(d) The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before October 1, 2005, on its intended use of funds pursuant to subsection (a) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2006, on its actual current and intended future use of funds pursuant to subsection (a) of this section.

ESTABLISH PILOT PROGRAM FOR MOTOR CARRIER ENFORCEMENT CIVILIAN INSPECTION SUPPORT TEAMS

SECTION 28.24.(a) The State Highway Patrol Motor Carrier Enforcement Section shall establish a piot program comprised of two civilian data collection teams to supplement portable weight and inspection operations and to study the potential for increasing the effectiveness of Motor Carrier Enforcement Officers operating remotely from permanent weigh station facilities. Each team shall consist of two civilian members and shall be provided all necessary equipment to supplement the portable weight and inspection operations of the Motor Carrier Enforcement Section of the State Highway Patrol.

SECTION 28.24.(b) The State Highway Patrol shall report the effectiveness of the Civilian Inspection Support Team pilot program and make any recommendations which may increase the effectiveness of Motor Carrier Enforcement activities on bypass routes and areas remote from permanent weigh station facilities to the Joint Legislative Transportation Oversight Committee by August 1, 2006.

DEPARTMENT OF TRANSPORTATION TO SHARE REAL-TIME WEIGH-IN-MOTION DATA AND PERIODIC SUMMARIES OF DATA COLLECTED AT EXISTING DOT WEIGH-IN-MOTION SITES

SECTION 28.25.(a) The Department of Transportation shall provide the State Highway Patrol, Motor Carrier Enforcement Section, access to all real-time data collection efforts at all existing weigh-in-motion sites by October 1, 2005, to include but not limited to:

(1) Installation of wireless access points at each site.
(2) Providing periodic summaries of collected data to assist in monitoring overweight vehicle travel volumes and habits.
(3) Acquisition of any necessary software to allow interfacing with the existing systems.
(4) Access to any new facilities constructed on DOT rights-of-way.

SECTION 28.25.(b) The State Highway Patrol shall report the effectiveness of the access to weigh-in-motion sites, the collected data, and use of these sites as a vehicle weight screening technology to increase the effectiveness of Motor Carrier Enforcement activities to the Joint Legislative Transportation Oversight Committee by August 1, 2006.

PRELIMINARY ASSESSMENT OF PORT DEVELOPMENT AND RAIL SUPPORT SERVICES

SECTION 28.26.(a) The Rail Division of the Department of Transportation, in association with the State Ports Authority, may, from available funding and in an amount not to exceed twenty-five thousand dollars ($25,000), contract with a third party to complete a preliminary assessment of the need for the State to:

(1) Create a deep channel port.
(2) Create an inland ocean cargo terminal.
(3) Create a logistics operations center.
(4) Identify collateral rail requirements to serve these functions.

SECTION 28.26.(b) The Rail Division shall report, in electronic and written formats, the assessment to the Joint Legislative Transportation Oversight Committee before May 1, 2006.

FUNDS FOR ECONOMIC DEVELOPMENT, SPOT SAFETY, AND TRANSPORTATION IMPROVEMENT PROGRAM PROJECTS

SECTION 28.27. Of the funds appropriated by this act to the Department of Transportation in fiscal year 2005-2006, twenty-eight million dollars ($28,000,000) shall be allocated equally among the 14 Highway Divisions for economic development transportation projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Board of Transportation. Funds in each Division not needed for economic development projects shall be used on spot safety needs to enhance safety, reduce congestion, improve traffic flow, reduce accidents, and for system preservation. Any remaining funds in each Division shall be used on Transportation Improvement Program projects.

FRIENDS OF THE N.C. MARITIME MUSEUM/TALL SHIPS EVENT

SECTION 28.28. Of the funds available to the Department of Transportation, up to one million six hundred fifty thousand dollars ($1,650,000) shall

be used during fiscal year 2005-2006 to enhance transportation infrastructure for the Friends of the N.C. Maritime Museum/Tall Ships Event in Beaufort.

PART XXIX. SALARIES AND EMPLOYEE BENEFITS

GOVERNOR AND COUNCIL OF STATE/SALARY INCREASES

SECTION 29.1.(a) Effective July 1, 2005, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred twenty-one thousand three hundred ninety-one dollars ($121,391)~~one hundred twenty-three thousand eight hundred nineteen dollars ($123,819) annually, payable monthly."

SECTION 29.1.(b) Effective July 1, 2005, the annual salaries for the members of the Council of State, payable monthly, for the 2005-2006 and 2006-2007 fiscal years are:

Council of State	Annual Salary
Lieutenant Governor	$109,279
Attorney General	109,279
Secretary of State	109,279
State Treasurer	109,279
State Auditor	109,279
Superintendent of Public Instruction	109,279
Agriculture Commissioner	109,279
Insurance Commissioner	109,279
Labor Commissioner	109,279

NONELECTED DEPARTMENT HEADS/SALARY INCREASES

SECTION 29.2. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the 2005-2006 and 2006-2007 fiscal years are:

Nonelected Department Heads	Annual Salary
Secretary of Administration	$106,765
Secretary of Correction	106,765
Secretary of Crime Control and Public Safety	106,765
Secretary of Cultural Resources	106,765
Secretary of Commerce	106,765
Secretary of Environment and Natural Resources	106,765
Secretary of Health and Human Services	106,765
Secretary of Juvenile Justice and Delinquency	106,765
Secretary of Revenue	106,765
Secretary of Transportation	106,765

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

SECTION 29.3. The annual salaries, payable monthly, for the 2005-2006 and 2006-2007 fiscal years for the following executive branch officials are:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$97,175

State Controller	135,997
Commissioner of Motor Vehicles	97,175
Commissioner of Banks	109,279
Chairman, Employment Security Commission	133,161
State Personnel Director	106,765
Chairman, Parole Commission	88,733
Members of the Parole Commission	40,960
Chairman, Utilities Commission	121,701
Members of the Utilities Commission	109,279
Executive Director, Agency for Public Telecommunications	81,921
Director, Museum of Art	99,573
Executive Director, North Carolina Agricultural Finance Authority	94,587
State Chief Information Officer	135,915

JUDICIAL BRANCH OFFICIALS/SALARY INCREASES

SECTION 29.4.(a) The annual salaries, payable monthly, for specified Judicial Branch officials for the 2005-2006 and 2006-2007 fiscal years are:

Judicial Branch Officials	Annual Salary
Chief Justice, Supreme Court	$123,819
Associate Justice, Supreme Court	120,583
Chief Judge, Court of Appeals	117,568
Judge, Court of Appeals	115,559
Judge, Senior Regular Resident Superior Court	112,419
Judge, Superior Court	109,279
Chief Judge, District Court	99,231
Judge, District Court	96,091
Administrative Officer of the Courts	112,419
Assistant Administrative Officer of the Courts	102,684

SECTION 29.4.(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed sixty-two thousand nine hundred thirty dollars ($62,930), and the minimum salary of any assistant district attorney or assistant public defender is at least thirty-two thousand eight hundred eighty-five dollars ($32,885), effective July 1, 2005.

SECTION 29.4.(c) Effective July 1, 2005, the annual salaries of permanent, full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by the greater of eight hundred fifty dollars ($850.00) or two percent (2%).

SECTION 29.4.(d) Effective July 1, 2005, the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by pro rata amounts of eight hundred fifty dollars ($850.00) or two percent (2%), whichever is greater.

CLERK OF SUPERIOR COURT/SALARY INCREASES

SECTION 29.5. Effective July 1, 2005, G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
Less than 100,000	~~$71,659~~ $73,092
100,000 to 149,999	~~80,413~~ 82,021
150,000 to 249,999	~~89,169~~ 90,952
250,000 and above	~~97,925.~~ 99,884.

The salary schedule in this subsection is intended to represent the following approximate percentage of the salary of a chief district court judge:

Population	Annual Salary
Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASES

SECTION 29.6. Effective July 1, 2005, G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary
Minimum	~~$27,515~~ $28,365
Maximum	~~47,626~~ 48,579

Deputy Clerks	Annual Salary
Minimum	~~$23,565~~ $24,415
Maximum	~~36,934.~~ 37,784."

MAGISTRATES' SALARY INCREASES

SECTION 29.7.(a) Effective July 1, 2005, G.S. 7A-171.1(a) reads as rewritten:

"(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate.

(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate

was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary	
Entry Rate	~~$27,889~~	$28,739
Step 1	~~30,525~~	31,375
Step 2	~~33,393~~	34,243
Step 3	~~36,523~~	37,373
Step 4	~~39,952~~	40,802
Step 5	~~43,789~~	44,665
Step 6	~~48,036.~~	48,997.

(2) A part-time magistrate is a magistrate who is assigned to work an average of less than 40 hours of work a week during the term, except that no magistrate shall be assigned an average of less than 10 hours of work a week during the term. A part-time magistrate is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and G.S. 135-40.2(a). The Administrative Officer of the Courts designates whether a magistrate is a part-time magistrate. A part-time magistrate shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during the term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

(3) Notwithstanding any other provision of this subsection, a magistrate who is licensed to practice law in North Carolina or any other state shall receive the annual salary provided in the Table in subdivision (1) of this subsection for Step 4."

SECTION 29.7.(b) Effective July 1, 2005, G.S. 7A-171.1(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, the following salary provisions apply to individuals who were serving as magistrates on June 30, 1994:

(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	~~$22,325~~	$23,175
1 or more but less than 3 years of service	~~23,389~~	24,239
3 or more but less than 5 years of service	~~25,530.~~	26,380.

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a).

(2) The salaries of magistrates who on June 30, 1994, were paid at a salary level of five or more years of service shall be based on the rates set out in subsection (a) as follows:

Salary Level	Salary Level

on June 30, 1994	on July 1, 1994
5 or more but less than 7 years of service	Entry Rate
7 or more but less than 9 years of service	Step 1
9 or more but less than 11 years of service	Step 2
11 or more years of service	Step 3

Thereafter, their salaries shall be set in accordance with the provisions in subsection (a).

(3) The salaries of magistrates who are licensed to practice law in North Carolina shall be adjusted to the annual salary provided in the table in subsection (a) as Step 4, and, thereafter, their salaries shall be set in accordance with the provisions in subsection (a).

(4) The salaries of "part-time magistrates" shall be set under the formula set out in subdivision (2) of subsection (a) but according to the rates set out in this subsection."

GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

SECTION 29.8. Effective July 1, 2005, G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~ninety thousand five hundred fourteen dollars ($90,514)~~ninety-two thousand three hundred twenty-four dollars ($92,324) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

SERGEANTS-AT-ARMS AND READING CLERKS

SECTION 29.9. Effective July 1, 2005, G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~three hundred eleven dollars ($311.00)~~three hundred twenty-seven dollars ($327.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

LEGISLATIVE EMPLOYEES

SECTION 29.10. Effective July 1, 2005, the Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 2005-2006 by the greater of eight hundred fifty dollars ($850.00) or two percent (2%). Nothing in this act limits any of the provisions of G.S. 120-32.

COMMUNITY COLLEGE PERSONNEL/SALARY INCREASES

SECTION 29.11. The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, funds to the North Carolina Community Colleges System Office necessary

to provide an annual salary increase of the greater of eight hundred fifty dollars ($850.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all community college employees supported by State funds.

UNIVERSITY OF NORTH CAROLINA SYSTEM/EPA COMPENSATION

SECTION 29.12.(a) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an annual salary increase of the greater of eight hundred fifty dollars ($850.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). The flat dollar increase of eight hundred fifty dollars ($850.00) shall be made to all employees whose annual salary is less than or equal to forty-two thousand five hundred dollars ($42,500). The percentage annual salary increase of two percent (2%) authorized by this section shall be made on an aggregated average basis, and these funds shall be allocated to individuals whose annual salary is greater than forty-two thousand five hundred dollars ($42,500), according to the rules adopted by the Board of Governors of The University of North Carolina or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SECTION 29.12.(b) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an average annual salary increase of two and twenty-four hundredths percent (2.24%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

MOST STATE EMPLOYEES/SALARY INCREASES

SECTION 29.13.(a) The salaries in effect June 30, 2005, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, effective July 1, 2005, by the greater of eight hundred fifty dollars ($850.00) or two percent (2%), unless otherwise provided by this act.

SECTION 29.13.(b) Except as otherwise provided in this act, the fiscal year 2005-2006 salaries for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by the greater of eight hundred fifty dollars ($850.00) or two percent (2%), effective July 1, 2005, unless otherwise provided by this act.

SECTION 29.13.(c) The salaries in effect for fiscal year 2005-2006 for all permanent part-time State employees shall be increased, effective July 1, 2005, by pro rata amounts of eight hundred fifty dollars ($850.00) or two percent (2%), whichever is greater.

SECTION 29.13.(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase, effective July 1, 2005, in accordance with subsection (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

SECTION 29.13.(e) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the greater of the eight hundred fifty dollar ($850.00) or two percent (2%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2005.

ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES

SECTION 29.14.(a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

SECTION 29.14.(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

SECTION 29.14.(c) The salary increases provided in this act are to be effective July 1, 2005, and do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2005.

Payroll checks issued to employees after July 1, 2005, which represent payment of services provided prior to July 1, 2005, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

SECTION 29.14.(d) The Director of the Budget shall transfer from the Reserve for Compensation Increases in this act for fiscal year 2005-2006 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

SECTION 29.14.(e) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

SECTION 29.14.(f) Permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the eight hundred fifty dollars ($850.00) or two percent (2%) annual increase provided by this act, whichever is greater.

SPECIAL ANNUAL LEAVE BONUS

SECTION 29.14A.(a) Except as provided by subsection (b) of this section, any person (i) who is a full-time permanent employee of the State, a community college institution, or a local board of education on September 1, 2005, and (ii) who is eligible to earn annual leave shall have a one-time additional five days of annual leave credited on that date. The additional leave shall be accounted for either separately or together with the leave provided by Section 28.3A of S.L. 2002-126 and by Section 30.12B(a) of S.L. 2003-284, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that may be carried forward. Part-time permanent employees shall receive a pro rata amount of the five days.

SECTION 29.14A.(b) The following persons are not eligible to receive the special annual leave bonus authorized by this section:

(1) Any employee or officer who does not earn annual leave.

(2) Any public school employee or State employee paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

SALARY ADJUSTMENT FUND

SECTION 29.15.(a) Any remaining appropriations in the Reserve for Compensation Increases authorized for employee salary increases not required for that purpose may be used to supplement the Salary Adjustment Fund.

SECTION 29.15.(b) Funds appropriated or otherwise transferred to the Salary Adjustment Fund by this act or any other provision of law shall be used to fund agency requests for the following purposes:

(1) Salary range revisions to provide competitive salary rates for affected job classifications in response to changes in labor market salary rates as documented through data collection and analysis according to accepted human resource professional practices and standards.

(2) Reallocation of positions to higher-level job classifications to compensate employees for more difficult duties at competitive salary rates as documented through data collection and analysis according to accepted human resource professional practices and standards.

Priority funding shall be given to those salary range revisions previously approved by the State Personnel Commission and reallocations previously approved by the Office of State Personnel or designee.

SECTION 29.15.(c) The Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations prior to transferring any salary adjustment funds for any State agency.

SECTION 29.15.(d) The Director of the Budget may transfer to General Fund budget codes from the General Fund Salary Adjustment Fund and may transfer to Highway Fund budget codes from the Highway Fund Salary Adjustment Fund amounts required to support salary adjustments authorized by this section.

SECTION 29.15.(e) The Judicial Department is eligible for the funding authorized in subsection (a) of this section.

TEMPORARY SALES TAX TRANSFER FOR WILDLIFE RESOURCES COMMISSION SALARY INCREASES

SECTION 29.16. For the 2005-2006 and 2006-2007 fiscal years, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources

Fund to fund the cost of any legislative salary increase for employees of the Wildlife Resources Commission.

STATE AGENCY TEACHERS' COMPENSATION

SECTION 29.17. Funds in the Reserve for Compensation Increases shall be used for experience step increases for employees of schools operated by the Department of Health and Human Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention, who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

STATE GOVERNMENT EMPLOYMENT FAIR MINIMUM WAGE

SECTION 29.18.(a) All permanent, full-time employees subject to the State Personnel Act shall be paid a minimum salary of at least twenty thousand one hundred twelve dollars ($20,112) per year. Permanent, full-time employees subject to the State Personnel Act working on a schedule requiring less than 12 months' service per year shall be paid the minimum salary pro rata.

SECTION 29.18.(b) In order to lessen salary compression and potential pay inequities, State agencies, departments, and institutions, and The University of North Carolina may, when increasing salaries pursuant to this section, make adjustments to the salaries of supervisors and other employees who have, when considering classification, significantly more experience and length of service compared to the employees receiving this pay increase. These salary compression and pay equity determinations shall be made in consultation with the Office of State Personnel.

Of the funds appropriated in this act from the General Fund to the Reserve for Compensation Increases, the Office of State Budget and Management shall use funds in an amount not to exceed seven hundred fifty thousand dollars ($750,000) for the 2005-2006 fiscal year and not to exceed seven hundred fifty thousand dollars ($750,000) for the 2006-2007 fiscal year to implement this subsection. The Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations prior to the transfer of any funds pursuant to this subsection.

SECTION 29.18.(c) The fair minimum wage salary adjustment provided by this section shall be calculated and awarded after any across-the-board salary increases authorized by this act.

SALARY SUPPLEMENTS FOR PERSONNEL EMPLOYED IN CERTAIN STATE AGENCIES

SECTION 29.19.(a) G.S. 143B-146.21 is amended by adding a new subsection to read:

"(e) The Secretary of Health and Human Services, in consultation with the Office of State Personnel, shall set the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed in the programs operated by the Department of Health and Human Services and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement".

SECTION 29.19.(b) G.S. 143B-516(b) is amended by adding the following new subdivision to read:

"(b) The Secretary shall have the following powers and duties:

…

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subdivision shall be construed to include "merit pay" under the term "salary supplement".

...."

SECTION 29.19.(c) G.S. 148-22.1 is amended by adding a new subsection to read:

"(c) The Secretary of Correction, in consultation with the Office of State Personnel, shall set the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are Division of Prison employees and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement".

INDUSTRIAL COMMISSION SALARIES/IN-RANGE SALARY ADJUSTMENTS

SECTION 29.20.(a) Of the revenue generated by implementing a fee for the required review of Form 21 and Form 26 Agreements, the Industrial Commission may use up to one hundred seventy-one thousand nine hundred dollars ($171,900) in each year of the 2005-2007 biennium to provide the salary adjustments authorized by subsection (b) of this section and in-range salary adjustments for Industrial Commission staff.

SECTION 29.20.(b) Effective July 1, 2005, G.S. 97-78 reads as rewritten:

"§ **97-78. Salaries and expenses; administrator, executive secretary, deputy commissioners, and other staff assistance; annual report.**

(a) The salary of each commissioner shall be the same as that fixed from time to time for district attorneys except that the commissioner designated as chair shall receive one thousand five hundred dollars ($1,500) additional per annum.

(b) The Commission may appoint an administrator whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System. The Commission may appoint an executive secretary whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System and who, upon entering upon his duties, shall give bond in such sum as may be fixed by the Commission. The Commission may also employ such clerical or other assistance as it may deem necessary, and fix the compensation of its staff, except that the salaries of the administrator and the executive secretary shall be fixed by subsection (b1) of this section. The compensation of Commission staff shall be in keeping with the compensation paid to the persons employed to do similar work in other State departments.

(b1) The salary of the administrator shall be ninety percent (90%) of the salary of a commissioner. The salary of the executive secretary shall be ~~eighty percent (80%)~~ ninety percent (90%) of the salary of a commissioner. ~~In lieu of merit and other incremental raises, the administrator and the executive secretary shall receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.~~

(b2) The Chairman of the Industrial Commission shall designate one deputy commissioner as chief deputy commissioner. The salary of the chief deputy commissioner shall be ninety percent (90%) of the salary of a commissioner.

(b3) The salary of deputy commissioners shall be based upon years of experience as a deputy commissioner as follows:

(1) Seventy-five percent (75%) of the salary of a commissioner, with three years of experience or less.

(2) Seventy-seven percent (77%) of the salary of a commissioner, with more than three but less than seven years of experience.

(3) Eighty percent (80%) of the salary of a commissioner, with seven or more but less than 10 years of experience.

(4) Eighty-three percent (83%) of the salary of a commissioner, with 10 or more but less than 12 years of experience.

(5) Eighty-five percent (85%) of the salary of a commissioner, with 12 or more years experience.

(b4) In lieu of merit and other incremental raises, the administrator, executive secretary, chief deputy commissioner, and deputy commissioners shall receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.

(c) The members of the Commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Commission, but such expenses shall be certified by the person who incurred the same, and shall be approved by the chairman of the Commission before payment is made.

(d) All salaries and expenses of the Commission shall be audited and paid out of the State treasury, in the manner prescribed for similar expenses in other departments or branches of the State service, and to defray such salaries and expenses a sufficient appropriation shall be made under the General Appropriation Act as made to other departments, commissions and agencies of the State government.

(e) The Commission shall publish annually for free distribution a report of the administration of this Article, together with such recommendations as the Commission deems advisable."

ESC CHAIRMAN PROSPECTIVE SALARY CHANGE

SECTION 29.20A.(a) Effective upon the appointment of the next Chairman of the Employment Security Commission of North Carolina, G.S. 96-3(c) reads as rewritten:

"(c) Salaries. – The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be the same as the salary fixed by the General Assembly in the Current Operations Appropriations ~~Act;~~ Act for the Secretary of Commerce, and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and

committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund."

SECTION 29.20A.(b) Effective September 1, 2005, and continuing until the appointment of the next Chairman of the Employment Security Commission of North Carolina, G.S. 96-3(c) reads as rewritten:

"(c) Salaries. – The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be fixed by the General Assembly in the Current Operations Appropriations Act; and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund. Notwithstanding G.S. 138-4, the chairman of the Employment Security Commission shall not accrue longevity pay."

COASTAL MANAGEMENT DIVISION SALARY INCREASES

SECTION 29.21. The Department of Environment and Natural Resources is authorized to, and shall, provide to the employees of the Division of Coastal Management an increase in annual salary of ten percent (10%). This increase shall be in addition to any other increase authorized by this act.

SALARY INCREASES FOR AGRICULTURAL PROGRAM EMPLOYEES

SECTION 29.22. Of the funds appropriated in this act to the Board of Governors of The University of North Carolina, the sum of four million dollars ($4,000,000) for the 2005-2006 fiscal year and the sum of four million dollars ($4,000,000) for the 2006-2007 fiscal year shall be allocated and used as follows:

(1) $3,700,000 in each year to support salary increases for Agricultural Program employees of North Carolina State University who are exempt from the State Personnel Act.

(2) $300,000 in each year to support salary increases for Agricultural Program employees of North Carolina Agricultural and Technical State University who are exempt from the State Personnel Act.

These funds shall be allocated to individuals according to rules adopted by the Board of Governors of The University of North Carolina and may not be used for any other purpose other than for salary increases and the necessary employer contributions provided by this section.

RESOURCE PROSECUTOR LONGEVITY

SECTION 29.23A. G.S. 7A-65(d) reads as rewritten:

"(d) In lieu of merit and other increment raises paid to regular State employees, an assistant district attorney shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after

15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as an assistant district attorney, district attorney, resource prosecutor, public defender, appellate defender, assistant public or appellate defender, justice or judge of the General Court of Justice, or clerk of superior court. For purposes of this subsection, "resource prosecutor" means a former assistant district attorney who has left the employment of the district attorney's office to serve in a specific, time-limited position with the Conference of District Attorneys."

LONGEVITY PAY/CLERKS OF SUPERIOR COURT

SECTION 29.23B. G.S. 7A-101(c) reads as rewritten:

"(c) In lieu of merit and other increment raises paid to regular State employees, a clerk of superior court shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the clerk's annual salary payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. Service shall mean service in the elective position of clerk of superior court, as an assistant clerk of court and as a supervisor of clerks of superior court with the Administrative Office of the Courts and shall not include service as a deputy or acting clerk. Service shall also mean service as a ~~justice or judge~~ justice, judge, or magistrate of the General Court of Justice or as a district attorney."

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 29.24.(a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

SECTION 29.24.(b) Effective July 1, 2005, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2005-2006 fiscal year are: (i) six and eighty-two hundredths percent (6.82%) – Teachers and State Employees; (ii) eleven and eighty-two hundredths percent (11.82%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and sixteen-hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program

includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.24.(c) Effective July 1, 2006, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2006-2007 fiscal year are: (i) six and eighty-two hundredths percent (6.82%) – Teachers and State Employees; (ii) eleven and eighty-two hundredths percent (11.82%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and sixteen hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 29.24.(d) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2005-2006 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees – two thousand eight hundred fifty-three dollars ($2,853) and (ii) non-Medicare-eligible employees and retirees – three thousand seven hundred forty-eight dollars ($3,748).

SECTION 29.24.(e) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2006-2007 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees – two thousand nine hundred thirty-four dollars ($2,934) and (ii) non-Medicare-eligible employees and retirees – three thousand eight hundred fifty-four dollars ($3,854).

PROVIDE COST-OF-LIVING INCREASES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LOCAL RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM

SECTION 29.25.(a) G.S. 135-5 is amended by adding a new subsection to read:

"(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

SECTION 29.25.(b) G.S. 135-65 is amended by adding a new subsection to read:

"(z) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

SECTION 29.25.(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005."

SECTION 29.25.(d) G.S. 128-27 is amended by adding a new subsection to read:

"(ggg) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 2005, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND

SECTION 29.26. G.S. 58-86-55 reads as rewritten:

"§ **58-86-55. Monthly pensions upon retirement.**

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of ~~one hundred sixty-one dollars ($161.00)~~ one hundred sixty-three dollars ($163.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 2004,~~ July 1, 2005, receive a pension of ~~one hundred sixty-one dollars ($161.00)~~ one hundred sixty-three dollars ($163.00) per month.

Members shall pay ten dollars ($10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1983. No member shall be entitled to a pension hereunder until the member's official duties as a fireman or rescue squad

worker for which the member is paid compensation shall have been terminated and the member shall have retired as such according to standards or rules fixed by the board of trustees.

A member who is totally and permanently disabled while in the discharge of the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of ~~one hundred sixty-one dollars ($161.00)~~ one hundred sixty-three dollars ($163.00) per month beginning the first month after the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars ($10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose volunteer department is taken over by a city or county, and because of such annexation or takeover is unable to perform as a fireman or rescue squad worker of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

INCREASE THE MAXIMUM MONTHLY PENSION BENEFITS FOR RETIRED MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD

SECTION 29.27. G.S. 127A-40(a) reads as rewritten:

"(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) per month for 20 years' creditable military service with an additional ~~five dollars ($5.00)~~ seven dollars and fifty cents ($7.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed ~~one hundred dollars ($100.00)~~ one hundred fifty

dollars ($150.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard."

CONFORM RETIREE RETURN TO TEACHING BENEFIT TO IRS GUIDELINES/CLARIFY DEFINITION OF RETIREMENT

SECTION 29.28.(a) G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any ~~capacity, except as a substitute teacher or a part-time tutor,~~ capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a ~~substitute, interim, or permanent~~ permanent, full-time basis in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 29.28.(b) G.S. 115C-325(a)(5a) reads as rewritten:

"(5a) "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any ~~capacity, other than as a substitute teacher or a part-time tutor, with a local board of education or a charter school~~ capacity for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of education or a charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers."

SECTION 29.28.(c) Notwithstanding any other provision of law, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

Notwithstanding any other provision of law, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position, shall be paid from local funds.

SECTION 29.28.(d) Section 57(c) of S.L. 2004-199 reads as rewritten:

"**SECTION 57.(c)** This section expires June 30, ~~2005.~~ 2007."

SECTION 29.28.(e) G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" ~~shall mean~~ means the termination of employment and the ~~withdrawal~~ complete separation from active service with no intent or agreement, express or implied, to return to service. ~~a~~ A retirement allowance ~~granted~~ under the provisions of this ~~Chapter.~~ Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no ~~service~~ service, including part-time, temporary, substitute, or contractor service, at any time during ~~that month.~~ the six months immediately following the effective date of retirement."

SECTION 29.28.(f) Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement Program until June 30, 2007. The remainder of this section becomes effective June 30, 2005.

INCREASE BENEFIT/SHERIFFS' SUPPLEMENTAL PENSION FUND

SECTION 29.30.(a) G.S. 143-166.85(a) reads as rewritten:

"(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as sheriff multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired sheriffs on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of ~~G.S., 143-166.83(b).~~ G.S. 143-166.83(b). In no event however shall a monthly pension under this Article exceed an amount, which when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or to the amount he would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is greater than seventy -five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount of ~~one thousand two hundred dollars ($1,200).~~ one thousand five hundred dollars ($1,500)."

SECTION 29.30.(b) G.S. 7A-304(a)(3a) reads as rewritten:

"(3a) For the supplemental pension benefits of sheriffs, the sum of ~~seventy-five cents (75¢)~~ one dollar twenty-five cents ($1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes."

SECTION 29.30.(c) Subsection (b) of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (b) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. The remainder of this section becomes effective September 1, 2005.

UTILITIES COMMISSION MEMBERS IN CONSOLIDATED JUDICIAL RETIREMENT SYSTEM/TRANSFER OF CONTRIBUTIONS TO CONSOLIDATED JUDICIAL RETIREMENT SYSTEM/RETIREMENT ALLOWANCE LIMITATION FOR MEMBERS OF THE LEGISLATIVE RETIREMENT SYSTEM

SECTION 29.30A.(a) G.S. 135-50(b) reads as rewritten:

"(b) The purpose of this Article is to improve the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, ~~and~~ clerk of superior court, within the General Court of ~~Justice.~~ Justice, and to membership on the Utilities Commission."

SECTION 29.30A.(b) G.S. 135-51 reads as rewritten:

"§ **135-51. Scope.**

(a) This Article provides consolidated retirement benefits for all justices and judges, district attorneys, and solicitors who are serving on January 1, 1974, and who become such thereafter; and for all clerks of superior court who are so serving on January 1, 1975, and who become such ~~thereafter.~~ after that date; and for all members

of the Utilities Commission who are serving on September 1, 2005, and who become members of the Utilities Commission after that date.

(b) For justices and judges of the appellate and superior court divisions of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Articles 6 and 8, as the case may be, of Chapter 7A of the General Statutes.

For district attorneys and judges of the district court of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

For clerks of superior court of the General Court of Justice who so served prior to January 1, 1975, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

(c) The retirement benefits of any person who becomes a justice or judge, district attorney, or solicitor on and after January 1, 1974, or clerk of superior court on and after January 1, 1975, or a member of the Utilities Commission on or after September 1, 2005, shall be determined solely in accordance with the provisions of this Article."

SECTION 29.30A.(c) G.S. 135-53 reads as rewritten:

"§ **135-53. Definitions.**

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions" with respect to any member shall mean the sum of all the amounts deducted from the compensation of the member pursuant to G.S. 135-68 since he last became a member and credited to his account in the annuity savings fund, plus any amount standing to his credit pursuant to G.S. 135-67(c) as a result of a prior period of membership, plus any amounts credited to his account pursuant to G.S. 135-28.1(b) or 135-56(b), together with regular interest on all such amounts computed as provided in G.S. 135-7(b).

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the bases of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(2a) "Average final compensation" shall mean the average annual compensation of a member during the 48 consecutive calendar months of membership service producing the highest such average.

(3) "Beneficiary" shall mean any person in receipt of a retirement allowance or other benefit as provided in this Article.

(4) "Board of Trustees" shall mean the Board of Trustees established by G.S. 135-6.

(4a) "Clerk of superior court" shall mean the clerk of superior court provided for in G.S. 7A-100(a).

(5) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for his service as a justice or judge, or district attorney, or clerk of superior ~~court.~~ court, or as a member of the Utilities Commission.

(6) "Creditable service" shall mean for any member the total of his prior service plus his membership service.

(6a) "District attorney" shall mean the district attorney or solicitor provided for in G.S. 7A-60.

(7) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(8) "Final compensation" shall mean for any member the annual equivalent of the rate of compensation most recently applicable to him.

(9) "Judge" shall mean any justice or judge of the General Court of Justice and the administrative officer of the courts.

(10) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.

(11) "Member" shall mean any person included in the membership of the Retirement System as provided in this Article.

(12) "Membership service" shall mean service as a judge, district attorney, ~~or~~ clerk of superior ~~court~~ court, or Utilities Commissioner, rendered while a member of the Retirement System.

(13) "Previous system" shall mean, with respect to any member, the retirement benefit provisions of Article 6 and Article 8 of Chapter 7A of the General Statutes, to the extent that such Article or Articles were formerly applicable to the member, and in the case of ~~judges~~ a judge of the district court division, ~~and~~ district attorney, and clerk of superior court of the General Court of Justice, and in the case of a Utilities Commissioner, the Teachers' and State Employees' Retirement System.

(14) "Prior service" shall mean service rendered by a member, prior to his membership in the Retirement System, for which credit is allowable under G.S. 135-56.

(14a) "Utilities Commissioner" means a member of the North Carolina Utilities Commission as provided for in G.S. 62-10.

(15) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7(b).

(16) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(17) "Retirement allowance" shall mean the periodic payments to which a beneficiary becomes entitled under the provisions of this Article.

(18) "Retirement System" shall mean the "Consolidated Judicial Retirement System" of North Carolina, as established in this Article.

(19) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year, unless otherwise defined by regulation of the Board of Trustees."

SECTION 29.30A.(d) G.S. 135-54 reads as rewritten:

"§ **135-54. Name and date of establishment.**

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for justices and judges, district attorneys, and clerks of superior court of the General Court of Justice of North Carolina, and Utilities Commissioners and their survivors. The Retirement System so created shall be established as of January 1, 1974.

The Retirement System shall have the power and privileges of a corporation and shall be known as the "Consolidated Judicial Retirement System of North Carolina," and by such name all of its business shall be transacted."

SECTION 29.30A.(e) G.S. 135-55 reads as rewritten:

"§ **135-55. Membership.**

(a) The membership of the Retirement System shall consist of:

(1) All judges and district attorneys in office on January 1, 1974;

(2) All persons who become judges and district attorneys or reenter service as judges and district attorneys after January 1, 1974;

(3) All clerks of superior court in office on January 1, 1975; ~~and~~

(4) All persons who become clerks of superior court or reenter service as clerks of superior court after January 1, ~~1975.~~1975;

(5) All Utilities Commissioners in office on September 1, 2005; and

(6) All persons who become Utilities Commissioners or reenter service as Utilities Commissioners after September 1, 2005.

(b) The membership of any person in the Retirement System shall cease upon:

(1) The withdrawal of his accumulated contributions after he is no longer a judge, district ~~attorney~~ attorney, Utilities Commissioner, or clerk of superior court, or

(2) His retirement under the provisions of the Retirement System, or

(3) His death."

SECTION 29.30A.(f) G.S. 135-58(a4) reads as rewritten:

"(a4) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after January 1, 2004, but before September 1, 2005, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

(1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;

(3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, or clerk of superior court;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56."

SECTION 29.30A.(g) G.S. 135-58 is amended by adding a new subsection to read:

"(a5) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after September 1, 2005, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

(1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court, as Administrative Officer of the Courts, or as a Utilities Commissioner;

(3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, or clerk of superior court;

(4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and

(5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56."

SECTION 29.30A.(h) G.S. 135-70.1 is amended by creating a new subsection to read:

"(a1) The accumulated contributions, creditable service, and reserves, if any, of a Utilities Commissioner, as defined in G.S. 135-53(14a), who is serving as a Utilities Commissioner on September 1, 2005, shall be transferred from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System for the service rendered as a Utilities Commissioner. The accumulated contributions credited in the annuity savings fund in the Teachers' and State Employees' Retirement System for service as a Utilities Commissioner shall be credited to the annuity savings fund in the Consolidated Judicial Retirement System, and the member shall be credited with all membership service as a Utility Commissioner in the Consolidated Judicial Retirement System."

SECTION 29.30A.(i) G.S. 135-71 is amended by adding a new subsection to read:

"(d) Notwithstanding the provisions of G.S. 135-70.1 to the contrary, a retired former member and/or beneficiary of the Teachers' and State Employees' Retirement System as defined in G.S. 135-1(6), whose retirement allowance from this System and/or from the Teachers' and State Employees' Retirement System ceases upon a return to membership service under this System, shall be permitted to transfer the accumulated contributions, creditable service, and reserves, if any, from the Teachers' and State Employees' Retirement System to this System on the same basis as provided for members of other retirement systems under G.S. 135-70.1, if the member attains five or more years of total membership service in this System, and completes at least three years of membership service subsequent to the member's return to membership service."

SECTION 29.30A.(j) G.S. 120-4.21(c) reads as rewritten:

"(c) Limitations. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of ~~his~~ the member's "highest annual ~~salary".~~ salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

SECTION 29.30A.(k) Subsection (j) of this section becomes effective September 1, 2005, but applies only to members retiring on and after that date. The remainder of this section becomes effective September 1, 2005.

CHANGE DISABILITY PLAN AMENDMENT EFFECTIVE DATE

SECTION 29.30B.(a) The introductory language to Section 4 of S.L. 2004-78 reads as rewritten:

"**SECTION 4.** Effective August 1, ~~2005,~~ 2006, G.S. 135-106(a), as rewritten by Section 3 of this act, reads as rewritten:"

SECTION 29.30B.(b) Section 6 of S.L. 2004-78 reads as rewritten:

"**SECTION 6.** Sections 1 through 3 are effective retroactively from and after July 1, 2003. Section 4 of this act becomes effective August 1, ~~2005,~~ 2006, and applies only to persons who are not vested in the disability plan in question on that date. The remainder of this act is effective when it becomes law."

DEATH BENEFITS ACT DEFINITION

SECTION 29.30C. G.S. 143-166.2(c) reads as rewritten:

"(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty' shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes. For purposes of this Article, when a ~~fireman~~ law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the ~~fireman~~ law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty."

STATE HEALTH PLAN CHANGES

SECTION 29.31.(a) G.S. 135-40.5 reads as rewritten:

"§ **135-40.5. Benefits not subject to deductible or coinsurance.**

(a) Repealed by Session Laws 1985, c. 192, s. 5.

(b) Repealed by Session Laws 1991, c. 427, s. 20.

(c) Preadmission Testing. – The Plan will pay one hundred percent (100%) of reasonable and customary charges for diagnostic, laboratory and x-ray examinations performed on an outpatient basis.

(d) Repealed by Session Laws 2001-253, s. 1(d), effective July 1, 2001.

(e) Routine Diagnostic Examinations. – The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including breast, colon, rectal, and prostate exams, X rays, ~~mammograms,~~ blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. The Plan will pay one hundred percent (100%) of allowable charges for mammograms once per year for covered individuals age 40 years and over, and not more often than once every three years for covered individuals to age 40 years, when such charges are incurred in a medically supervised facility. Routine diagnostic examinations and tests

covered under this subsection also include examinations and tests for the screening for the early detection of cervical cancer. The coverage shall be in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control for any covered female. For the purposes of this subsection, "examinations and laboratory tests for the screening for the early detection of cervical cancer" means conventional PAP smear screening, liquid-based cytology, and human papilloma virus (HPV) detection methods for women with equivocal findings on cervical cytologic analysis that are subject to the approval of and have been approved by the United States Food and Drug Administration. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements. The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars ($150.00) per fiscal year.

(f) Immunizations. – The Plan will pay one hundred percent (100%) of allowable charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician.

(g) Prescription Drugs. – The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are to be determined by the Plan's Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars ($10.00) for each generic prescription, twenty five dollars ($25.00) for each branded prescription, and ~~thirty-five dollars ($35.00)~~forty dollars ($40.00) for each branded prescription with a generic equivalent drug, and ~~forty dollars ($40.00)~~ fifty dollars ($50.00) for each branded or generic prescription not on a formulary used by the Plan. Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a 34-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for erectile dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage is medically necessary to the health of the member. The Plan and its pharmacy benefit manager shall not provide coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinium toxin without approval in advance by the pharmacy benefit manager. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars ($2,500) per person per fiscal year in copayments required by this subsection."

SECTION 29.31.(b) The first paragraph of G.S. 135-40.6 reads as rewritten:

"§ **135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).**

The benefits provided in this section are subject to a deductible of three hundred fifty dollars ($350.00) per covered individual to an aggregate maximum of one thousand fifty dollars ($1,050) per employee and child(ren) or employee and family coverage contract per fiscal year and are payable on the basis of eighty percent (80%) by the Plan and twenty percent (20%) by the covered individual up to a maximum of ~~one thousand five hundred dollars ($1,500)~~ two thousand dollars ($2,000) out-of-pocket per fiscal year. The aggregate maximum out-of-pocket required of individuals covered by this section shall not be more than ~~four thousand five hundred dollars ($4,500)~~six thousand dollars ($6,000) per employee and child(ren) or employee and family coverage contract per fiscal year.

…."

SECTION 29.31.(c) G.S. 135-40.6(8)s. reads as rewritten:

"§ **135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).**

…

(8) Other Covered Charges. –

…

s. Routine Diagnostic Examinations: Allowable charges for routine diagnostic examinations and tests, including examinations and tests for the screening for the early detection of cervical cancer, breast, colon, rectal, and prostate exams, X rays, ~~mammograms,~~ blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older and, for examinations and tests for the screening for the early detection of cervical cancer, in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. The Plan will pay one hundred percent (100%) of allowable charges for mammograms once per year for covered individuals age 40 years and over, and not more often than once every three years for covered individuals to age 40 years, when such charges are incurred in a medically supervised facility. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities or

to comply with governmental licensing requirements. For the purposes of this sub-subdivision, "examinations and laboratory tests for the screening for the early detection of cervical cancer" means conventional PAP smear screening, liquid-based cytology, and human papilloma virus (HPV) detection methods for women with equivocal findings on cervical cytologic analysis that are subject to the approval of and have been approved by the United States Food and Drug Administration."

SECTION 29.31.(d) G.S. 135-40.8 reads as rewritten:

"§ **135-40.8. Out-of-pocket expenditures.**

(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays eighty percent (80%) of the eligible expenses outlined in G.S. 135-40.6. The remaining twenty percent (20%) is paid by the covered individual until ~~one thousand five hundred dollars ($1,500)~~ two thousand dollars ($2,000) per covered individual up to an aggregate of ~~four thousand five hundred dollars ($4,500)~~ six thousand dollars ($6,000) per employee and child(ren) or employee and family coverage contract per fiscal year in excess of the deductible has been paid out of pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(b) Repealed by Session Laws 2001-253, s. 1(m), effective July 1, 2001.

(c) Notwithstanding any other provision of this Article, on the first day of each confinement the Plan does not pay the first one hundred ~~dollars ($100.00)~~ fifty dollars ($150.00) of the room accommodation charge allowable under G.S. 135-40.6(1). Any readmission within 60 days after discharge for the same reason shall be considered the same confinement for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c1) Notwithstanding any other provision of this Article, the Plan does not pay the first ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) of the facility fees and ancillary charges for allowable charges exceeding five hundred dollars ($500.00) per episode of care for hospital outpatient departments and ambulatory surgical facilities under G.S. 135-40.6(4). Readmission within 30 days after discharge for the same reason shall be considered the same episode of care for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c2) Notwithstanding any other provision of this Article, the Plan does not pay the first ~~one hundred dollars ($100.00)~~two hundred dollars ($200.00) of allowable emergency room charges when admission to a hospital pursuant to the emergency room use does not immediately follow. This subsection shall apply only when less costly alternative means of emergency medical care are reasonably available as determined by the Executive Administrator and Board of Trustees. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c3) Notwithstanding any other provision of this Article, the Plan does not pay for the first fifteen dollars ($15.00) of allowable charges for each home, office, or skilled nursing facility visit under the provisions of G.S. 135-40.6(7)a. and b., G.S. 135-40.6(4), G.S. 135-40.6(8)i., j., k., n., r., and s., and G.S. 135-40.5(e). The co-payment assessed by this subsection shall be assessed only once per person per provider per day and shall not apply to laboratory, pathology, and radiology services, or

to charges for injected medications. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(d) Where a network of qualified preferred providers of inpatient and outpatient hospital care is reasonably available for use by those individuals covered by the Plan, use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars ($5,000) per fiscal year per covered individual up to an aggregate of fifteen thousand dollars ($15,000) per employee and child(ren) or employee and family coverage contract per fiscal year in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(e) Where qualified out-of-state preferred providers of medical care are not reasonably available in medical emergencies, the Plan pays the amounts covered by subsection (a) of this section. Any amount of charges for services under this section that exceeds the amount allowed by the Plan for the services of qualified preferred providers under this section shall be negotiated between the Plan and the provider of medical services, and the Plan shall ensure that the Plan member is not held financially responsible for the amount of these excess charges. If a Plan member is not capable of making a decision about choosing an in-State qualified preferred provider and emergency services personnel transport the Plan member to a provider outside of the Plan network, then the coverage under this subsection shall apply. As used in this section, a "medical emergency" is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of immediate medical care, could imminently result in injury or danger to self or others."

SECTION 29.31.(e) Section 31.21.(d) of S.L. 2004-124 reads as rewritten:

"**SECTION 31.21.(d)** This section becomes effective July 1, ~~2004.~~2004, but expires June 30, 2006."

FOREST CITY EMPLOYEES IN STATE HEALTH PLAN

SECTION 29.32. Section 31.26(j) of S.L. 2004-124 reads as rewritten:

"**SECTION 31.26.(j)** This section applies ~~to~~to:

(1) Bladen, Cherokee, Rutherford, Washington, and Wilkes Counties ~~only.~~only, and

(2) The Town of Forest City only."

STATE HEALTH PLAN/OPTIONAL PROGRAMS

SECTION 29.33.(a) G.S. 135-39.5B reads as rewritten:

"§ **135-39.5B. ~~Prepaid~~ Optional plans.**

(a) The Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, provide for optional prepaid hospital and medical benefits plans. Benefits offered under such optional plans shall be comparable to those offered under the Plan. The amounts of State funds contributed for such optional plans shall not be more than the amounts contributed for each person eligible under G.S. 135-40.2 on a noncontributory Employee Only basis, with the person selecting an optional plan paying any excess, if necessary. The amount of State funds contributed to such optional plans shall also not exceed the amount of an optional plan's cost for Employee Only coverage. The Executive Administrator and Board of Trustees are authorized to assess and collect fees from participating optional

plans provided by this section for administrative purposes and for risk management purposes. Such fees may be based upon the enrollees' risk factors and the number and types of contracts enrolled by each participating optional plan, and may be collected by the Plan in a manner prescribed by the Executive Administrator and Board of Trustees. In no instance shall benefits be paid under Part 3 of this Article for persons enrolled in an optional prepaid hospital and medical benefit plan authorized under this section on and after the effective date of enrollment in the optional prepaid plan, except in cases of continuous hospital confinement approved by the Executive Administrator.

(b) The Executive Administrator and Board of Trustees may, after consulting with the Committee on Employee Hospital and Medical Benefits, adopt an arrangement for an optional hospital and medical benefits program other than the one specified in subsection (a) of this section. The optional program may include one that is purchased or underwritten by the State and may be a PPO or other type optional program. Optional programs under this section are not subject to benefits and cost-sharing requirements under G.S. 135-40.5 through G.S. 135-40.9. The Executive Administrator and Board of Trustees may set premium rates for coverage under an optional program on a partially contributory basis, provided that the amounts of State funds contributed for coverage on a partially contributory basis shall not be more than the Plan's total noncontributory premium for Employee Only coverage, with the person selecting the optional program coverage paying the balance of the partially contributory premium not paid by the Plan. The amount of State funds contributed for purchased optional programs shall not exceed the amount of a purchased optional program's cost for Employee Only coverage. Contracts for an optional program under this subsection are not subject to Article 3 of Chapter 143 of the General Statutes."

SECTION 29.33.(b) G.S. 135-40.4(a) reads as rewritten:

"§ **135-40.4. Benefits in general.**

(a) In the event a covered person, as a result of accidental bodily injury, disease or pregnancy, incurs covered expenses, the Plan will pay benefits up to the amounts described in G.S. 135-40.5 through G.S. 135-40.9.

The Plan is divided into two parts. The first part includes certain benefits which are not subject to a deductible or coinsurance. The second part is a comprehensive plan and includes those benefits which are subject to both a three hundred fifty dollar ($350.00) deductible for each covered individual to an aggregate maximum of one thousand fifty dollars ($1,050) per employee and child(ren) or employee and family coverage contract and coinsurance of 80%/20%. There is a limit on out-of-pocket expenses under the second part.

Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan may contract with providers of institutional and professional medical care and services to established preferred provider networks. The terms pertaining to reimbursement rates or other terms of consideration of any contract between hospitals, hospital authorities, doctors or other medical providers, an optional program contract authorized under G.S. 135-39.5B(b), or a pharmacy benefit manager and the Plan shall not be a public record under Chapter 132 of the General Statutes for a period of thirty months after the date of the expiration of the contract. Provided, however, nothing in this subsection shall be deemed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their

use in the furtherance of their duties and responsibilities. The design, adoption, and implementation of the preferred provider contracts and networks are not subject to the requirements of Chapter 143 of the General Statutes, provided that for any hospital preferred provider network all hospitals will have an opportunity to contract with the Plan if they meet the contract requirements. The Executive Administrator and Board of Trustees shall, under the provisions of G.S. 135-39.5(12), pursue such preferred provider contracts on a timely basis and shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits on its progress in negotiating the preferred provider contracts. The Executive Administrator and Board of Trustees shall implement a refined diagnostic-related grouping or diagnostic-related grouping-based reimbursement system for hospitals as soon as practicable, but no later than January 1, 1995."

SECTION 29.33.(c) G.S. 135-39.4A(f) reads as rewritten:

"(f) The Executive Administrator shall appoint the Deputy Executive Administrator and may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims ~~Processor or~~Processor, with an optional ~~prepaid~~ hospital and medical benefit plan or program authorized under G.S. 135-39.5B, ~~or~~ with a preferred provider of institutional or professional hospital and medical ~~care~~ care, or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits."

SECTION 29.33.(d) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan may, after consultation with the Joint Legislative Commission on Governmental Operations, negotiate an extension of the current claims processing contract. The extension shall not exceed three years beyond June 30, 2007, the expiration date of the current claims processing contract. In negotiating the extension, the Executive Administrator may include as part of the extension amendments to the terms of the current claims processing contract, as well as inclusion of optional plans or programs authorized under G.S. 135-39.5B, as amended by this section. Amendments to the terms of the current claims processing contract may also include changes in reimbursement levels, services, and other terms as deemed appropriate by the Executive Administrator. As used in this subsection, "current claims processing contract" means the claims processing contract in effect on July 1, 2005, and expiring June 30, 2007. Consultation with the Joint Legislative Commission on Governmental Operations pursuant to this subsection meets the requirements of Article 3 of Chapter 135 of the General Statutes pertaining to consultation with the Committee on Employee Hospital and Medical Benefits.

STATE HEALTH PLAN/EXEMPT POSITIONS

SECTION 29.34.(a) G.S. 135-39.4A(f) reads as rewritten:

"(f) The Executive Administrator shall appoint the Deputy Executive Administrator and may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The

Executive Administrator may designate managerial, professional, or policy-making positions as exempt from the State Personnel Act. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor or with an optional prepaid hospital and medical benefit plan or with a preferred provider of institutional or professional hospital and medical care or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits."

SECTION 29.34.(b) G.S. 126-5(c1) is amended by adding the following new subdivision to read:

"(24) Employees of the Teachers' and State Employees' Comprehensive Major Medical Plan as designated by law or by the Executive Administrator of the Plan."

SECTION 29.34.(c) Notwithstanding G.S. 143-34.1, the Executive Administrator may establish and fill up to three additional managerial, professional, or policy-making positions as necessary to implement the Plan and may designate these positions as exempt from the State Personnel Act.

PART XXX. CAPITAL APPROPRIATIONS.

GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION

SECTION 30.1. The appropriations made by the 2005 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and acquiring buildings and land for State government purposes.

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 30.2. There is appropriated from the General Fund for the 2005-2006 fiscal year the following amount for capital improvements:

Capital Improvements – General Fund	**2005-2006**
Department of Commerce – State Ports Authority	
Ports of Wilmington and Morehead City	$ 9,000,000
Department of Cultural Resources	
Capitol Area Visitor's Center	250,000
NC Museum of Art	10,000,000
Department of Environment and Natural Resources	
Division of Forest Resources – District 9	300,000
Water Resources Development Projects	15,260,000
University of North Carolina System - Board of Governors	
North Carolina Agricultural and Technical State University – Visual and Performance Arts Building	25,000
North Carolina State University – Engineering Complex III	8,700,000

University of North Carolina at Chapel Hill – Renaissance Computing Institute	500,000
University of North Carolina at Chapel Hill – School of Dentistry	2,000,000
University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University – Joint Millennium Campus	2,000,000
University of North Carolina at Wilmington – School of Nursing	2,600,000
Winston-Salem State University – Laboratory Facility Planning Funds	750,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**$ 51,385,000**

WATER RESOURCES DEVELOPMENT PROJECT FUNDS

SECTION 30.3.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose costs are as indicated:

	Name of Project	**2005-2006**
(1)	Wilmington Harbor Deepening	$1,300,000
(2)	Manteo (Shallowbag) Bay Channel Maintenance	50,000
(3)	Wilmington Harbor Maintenance Dredging	500,000
(4)	B. Everett Jordan Water Supply Storage	100,000
(5)	John H. Kerr Reservoir Operations Evaluation	600,000
(6)	Bogue Banks Shore Protection Study (Carteret County)	75,000
(7)	Surf City/North Topsail Beach Protection Study	250,000
(8)	West Onslow Beach (Topsail)	100,000
(9)	Wrightsville Beach Nourishment	580,000
(10)	Hurricane Stream Restoration – Western North Carolina	2,000,000
(11)	Swan Quarter (Hyde County) Flood Control Dikes	100,000
(12)	Ocracoke NCCAT Estuarine Shoreline Protection	1,500,000
(13)	Far Creek Maintenance Dredging	120,000
(14)	Belhaven Harbor Environmental Improvements	250,000
(15)	Lower Lockwoods Folly River	286,000
(16)	Walters Slough Maintenance Dredging	122,000
(17)	Hurricane Isabel Emergency Stream Cleanup – Northeastern North Carolina	1,370,000
(18)	State-Local Projects	2,000,000
(19)	Princeville Flood Control	250,000
(20)	Currituck Sound Water Management Study	300,000
(21)	Aquatic Weed Control, Lake Gaston and Statewide	375,000
(22)	Tar River and Pamlico Sound Feasibility Study	100,000

(23)	State Sponsored Dredging Contingency	2,500,000
(24)	North Carolina Oyster Habitat Restoration	50,000
(25)	Emergency Flood Control Projects	187,000
(26)	Projected Feasibility Studies	100,000
(27)	Planning Assistance to Communities	95,000
TOTALS		**$15,260,000**

SECTION 30.3.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2005-2006 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

(1) U.S. Army Corps of Engineers project feasibility studies.

(2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2005-2006.

(3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 2006-2007 fiscal year.

SECTION 30.3.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

(1) All projects listed in this section.

(2) The estimated cost of each project.

(3) The date that work on each project began or is expected to begin.

(4) The date that work on each project was completed or is expected to be completed.

(5) The actual cost of each project.

The semiannual reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

NURSING EDUCATION AND RESEARCH CENTER AT FAYETTEVILLE STATE UNIVERSITY

SECTION 30.3A. Section 1.1 of S.L. 2004-179 reads as rewritten:

"**SECTION 1.1.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate	**Maximum**	**Project**

Maximum	**before 7/1/05**	
$180,000,000	$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for a Center of Excellence of Teaching and Nursing~~ services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for facilities for development of the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for an Optometry School facility at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, and engineering, architectural, and other consulting services for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western

		Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
10,000,000	10,000,000	Property acquisition in Piedmont-Triad Research Park for Winston-Salem State University programming related to biotechnology education and research; and land acquisition, site preparation, and engineering, architectural, and other consulting services for a Center for Design Innovation to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.
TOTAL:		
$388,000,000	$265,000,000"	

PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS

SECTION 30.4. The appropriations made by the 2005 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2005 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2005 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUNDS

SECTION 30.5. When each capital improvement project appropriated by the 2005 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under a construction contract, direct appropriations shall be encumbered to include all costs for construction, design,

investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

REPAIR AND RENOVATION RESERVE ALLOCATION

SECTION 30.6.(a) Of the funds in the Reserve for Repairs and Renovations for the 2005-2006 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 30.6.(b) Of the funds allocated to the Office of State Budget and Management in subsection (a) of this section, at least one million five hundred thousand dollars ($1,500,000) for the 2005-2006 fiscal year shall be used for the repair and renovation of the Charlotte Hawkins Brown State Historic Site.

SECTION 30.6.(c) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, up to seven hundred thousand dollars ($700,000) for the 2005-2006 fiscal year shall be used for the repair and reconstruction of the chancellor's residence at Fayetteville State University, notwithstanding G.S. 143-15.3A.

PROJECT COST INCREASE

SECTION 30.7. Upon the request of the administration of a State agency, department, or institution, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts

above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

NEW PROJECT AUTHORIZATION

SECTION 30.8. Upon the request of the administration of any State agency, department, or institution, the Director of the Budget may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Prior to authorizing the construction of a capital improvement project pursuant to this section, the Director shall consult with the Joint Legislative Commission on Governmental Operations.

ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS

SECTION 30.9. Funds that become available by gifts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget.

APPROPRIATIONS LIMITS/REVERSION OR LAPSE

SECTION 30.10. Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 2005 General Assembly may be expended only for specific projects set out by the 2005 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 2005 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

PART XXXI. LOTTERY.

LOTTERY

SECTION 31.1.(a) If House Bill 1023, 2005 Regular Session, becomes law, then the title of House Bill 1023, 2005 Regular Session, is amended to read: "AN ACT TO ESTABLISH A STATE LOTTERY TO GENERATE FUNDS TO FURTHER THE GOAL OF PROVIDING ENHANCED EDUCATIONAL OPPORTUNITIES SO THAT ALL STUDENTS IN THE PUBLIC SCHOOLS CAN ACHIEVE THEIR FULL POTENTIAL, TO SUPPORT SCHOOL CONSTRUCTION, TO FUND COLLEGE AND UNIVERSITY SCHOLARSHIPS, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES."

SECTION 31.1.(b) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-102, as enacted by that act, reads as rewritten:

"§ **18C-102. Purpose and intent.**

The General Assembly declares that the purpose of this Chapter is to establish a State-operated lottery to generate funds for the public purposes described in this Chapter. ~~The net revenues generated by the lottery shall not supplant revenues already expended or projected to be expended for those public purposes, and lottery net revenues shall supplement rather than be used as substitute funds for the total amount of money allocated for those public purposes.~~"

SECTION 31.1.(c) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-103(4) and (11), as enacted by that act, read as rewritten:

"§ **18C-103. Definitions.**

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

…

(4) 'Game' or 'lottery game' means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those ~~prizes.~~ prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).

…

(11) 'Vendor' or 'lottery vendor' means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission."

SECTION 31.1.(d) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-111, as enacted by that act, reads as rewritten:

"§ **18C-111. Commission membership; appointment; selection of chair; vacancies; removal; meetings; compensation.**

(a) The Commission shall consist of nine members, ~~three of whom shall be appointed by the Governor, three of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The Governor shall select the initial chair of the Commission from among its membership, who shall serve as chair for one year from the date of appointment. Thereafter, the Commission shall select a chair from among its membership to serve at the pleasure of the Commission.~~ five of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The Governor shall select the chair of the Commission from among its membership, who shall serve at the pleasure of the Governor.

(b) Of the initial appointees of the Governor, ~~one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall serve a term of one year, one member shall serve a term of two years, and one member~~

~~shall serve a term of three years.~~ three members shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall serve a term of two years, and one member shall serve a term of three years. All succeeding appointments shall be for terms of five years. Members shall not serve for more than two successive terms.

(c) Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.

(d) The Commission shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

(e) Members of the Commission shall receive per diem, subsistence, and travel as provided in G.S. 138-5 and G.S. 138-6."

SECTION 31.1.(e) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-112, as enacted by that act, reads as rewritten:

"§ **18C-112. Qualifications of Commissioners.**

(a) Of the members of the Commission appointed by the Governor, at least one member shall have a minimum of five years' experience in law ~~enforcement, and no more than two members shall be from the same political party as the Governor.~~ enforcement.

(b) Of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall be a certified public ~~accountant, and no more than two members shall be from the same political party as the President Pro Tempore of the Senate.~~accountant.

(c) Of the members of the Commission appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall have retail sales ~~experience, and no more than two members shall be from the same political party as the Speaker of the House of Representatives.~~experience as an owner or manager.

(d) In making appointments to the Commission, the appointing authorities shall consider the composition of the State with regard to geographic representation and gender, ethnic, racial, and age composition."

SECTION 31.1.(f) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-114 reads as rewritten:

"§ **18C-114. Powers and duties of the Commission.**

(a) The Commission shall have the following powers and duties:

(1) To specify the types of lottery games and gaming technology to be used in the Lottery.

(2) ~~To prescribe the nature of lottery advertising.~~To prescribe the nature of lottery advertising which shall comply with the following:

a. All advertising shall include resources for responsible gaming information.

b. No advertising may intentionally target specific groups or economic classes.

c. No advertising may be misleading, deceptive, or present any lottery game as a means of relieving any person's financial or personal difficulties.

d. No advertising may have the primary purpose of inducing persons to participate in the Lottery.

(3) To specify the number and value of prizes for winning tickets or shares in lottery games, including cash prizes, merchandise prizes, prizes consisting of deferred payments or annuities, and prizes of tickets or shares in the same lottery game or other lottery games.

(4) To specify the rules of lottery games and the method for determining winners of lottery games.

(5) To specify the retail sales price for tickets or shares for lottery games.

(6) To establish a system to claim prizes, including determining the time periods within which prizes must be claimed, to verify the validity of tickets or shares claimed to win prizes, and to effect payment of those prizes.

(7) To conduct a background investigation, including a criminal history record check, of applicants for the position of Director, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.

(8) ~~To determine the salary of the Director and the terms and conditions for employment contracts for the Director.~~ To charge a fee of lottery vendors not to exceed the cost of the criminal record check of the lottery vendor.

(9) To specify the manner of distribution, dissemination, or sale of lottery tickets or shares to lottery game retailers or directly to the public.

(10) To determine the incentives, if any, for any lottery employees, lottery vendors, lottery contractors, or electronic computer terminal operators.

(11) ~~To approve and authorize the Director to enter into contracts with lottery game retailers upon terms and conditions as specified by the Commission.~~ To specify the authority, compensation, and role of the Director, and to specify the authority, selection, and role of the other employees of the Commission. All of the following apply to all employees of the Commission:

a. No employee of the Commission may have a financial interest in any lottery vendor or lottery contractor, other than an interest as part of a mutual fund.

b. No employee of the Commission with decision-making authority shall participate in any decision involving the retailer or vendor with whom the employee has a financial interest.

c. No employee of the Commission who leaves the employment of the Commission may represent any vendor or retailer before the Commission for a period of one year following termination of employment with the Commission.

d. A background investigation shall be conducted on each applicant for employment with the Commission.

e. The Commission shall bond all employees with access to lottery funds or revenue or security.

(12) To approve and authorize the Director to enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter.

(13) Any other powers necessary for the Commission to carry out its responsibilities under this Chapter.

(b) ~~The Commission may adopt rules to carry out its duties and responsibilities under this Chapter.~~ Article 3D of Chapter 147 of the General Statutes shall not apply to the Commission."

SECTION 31.1.(g) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-120(b)(3) and G.S. 18C-120(b)(6), as enacted by that act, read as rewritten:

"(b) The Director shall have the following powers and duties, under the supervision of the Commission:

…

(3) To set the salaries of all Commission employees, subject to the approval of the ~~Commission, and to employ all personnel of the~~ Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.

…

(6) To ~~receive reports of alleged violations of the law relating to the operation of the Lottery and report those violations to the appropriate law enforcement authority.~~ coordinate and collaborate with the appropriate law enforcement authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.

…."

SECTION 31.1.(h) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-121, as enacted by that act, reads as rewritten:

"§ **18C-121. Accountability; books and records.**

The Director shall ~~make and keep~~ have made and kept books and records that accurately and completely reflect each day's transactions, including the distribution of tickets or shares to lottery game retailers, receipt of funds, prize claims, prizes paid directly by the Commission, expenses, and all other financial transactions involving lottery funds necessary to permit preparation of financial statements that conform with generally accepted accounting principles."

SECTION 31.1.(i) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-122, as enacted by that act, reads as rewritten:

"§ **18C-122. Independent audits.**

(a) At the beginning of each calendar year, the ~~Director~~ Commission shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

(b) The portion of the security audit report containing the overall evaluation of the Commission and of lottery games in terms of each aspect of security shall be presented to the Commission, to the Governor, and to the General Assembly.

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and

shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, the ~~Director~~ Commission shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly."

SECTION 31.1.(j) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-130(b), as enacted by that act, reads as rewritten:

"(b) In lottery games using tickets, each ticket in a particular game shall have printed on it a unique number distinguishing it from every other ticket in that lottery game and an abbreviated form of the game-play ~~rules.~~ rules, including resources for responsible gaming information. In lottery games using tickets, each ticket may have printed on it a depiction of one or more cartoon characters, whose primary appeal is not to minors. In lottery games using tickets with preprinted winners, the overall estimated odds of winning prizes shall be printed on each ticket. No name or photograph of a current or former elected official shall appear on the tickets of any lottery game."

SECTION 31.1.(j1) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-130(e), as enacted by that act, reads as rewritten:

"(e) ~~The only advertising of the Lottery that shall be permitted is point-of-sale advertising and advertising on the premises of lottery retailers.~~ Lottery advertising shall be tastefully designed and presented in a manner to minimize the appeal of lottery games to minors. The use of cartoon characters or of false, misleading, or deceptive information in lottery advertising is prohibited. All advertising promoting the sale of lottery tickets or shares for a particular game shall include the actual or estimated overall odds of winning the game."

SECTION 31.1.(k) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-132, as enacted by that act, reads as rewritten:

"§ **18C-132. Procedures for drawings and claiming prizes; payment of prizes; protection of information concerning certain prize winners.**

(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a drawing among entries, or a drawing among finalists, all of the following conditions shall be met:

(1) The drawings shall be open to the public.

(2) The drawings shall be witnessed by an independent certified public accountant.

(3) Any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the Commission both before and after the drawings.

(4) Audio and visual records of the drawings and inspections shall be made.

(b) ~~If a valid claim is not made for a prize within the applicable period, the unclaimed prize money may be used to increase prize payments for future games or may be used for other purposes consistent with this Chapter.~~ Prizes that remain unclaimed after the period set by the Commission for claiming the prizes shall not be considered abandoned property. If a valid claim is not made for a prize within the applicable period, the unclaimed prize money shall be handled in accordance with Article 35A of Chapter 115C of the General Statutes.

(c) After the expiration of the claim period for prizes for each lottery game, the Commission shall make available a detailed tabulation of the total number of prizes of each prize denomination that was actually claimed and paid directly by the Commission.

(d) No prize shall be paid for a lottery ticket or share that is stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or recorded by the Commission by the applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with any additional specific rules and public or confidential validation and security tests appropriate to the particular game involved.

(e) No ~~particular~~ valid claim for a prize in any lottery game shall be paid more than once. The Director, Commission, and the State shall be discharged of all liability upon payment of a prize.

(f) Winners of less than six hundred dollars ($600.00) shall be permitted to claim prizes from any of the following:

(1) The same lottery game retailer who sold the winning ticket or share.

(2) ~~From any~~ Any other lottery retailer.

(3) ~~Directly from the~~ The Commission.

(g) Winners of six hundred dollars ($600.00) or more shall claim prizes directly from the Commission.

(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid to the estate of a deceased prizewinner or to a person designated pursuant to a court order.

(i) No ticket or share in a lottery game shall be purchased by, and no prize shall be paid to, a member of the Commission, the Director, or employee of the Commission, or to any spouse, parent, or child living in the same household as a person disqualified by this subsection.

(j) No prize shall be paid to a person under the age of 18.

(k) If a prize winner submits to the Commission a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with that prize winner or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, that prize winner's identifying information shall be treated as confidential information under G.S. 132-1.2 as long as the protective order remains in effect or the prize winner remains a certified program participant in the Address Confidentiality Program. That prize winner's identifying information shall be available for inspection by a law enforcement agency or by a person identified in a court order if inspection of the address by that person is directed by that court order.

(l) All prizes are subject to the State income tax."

SECTION 31.1.(k1) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-134, as enacted by that act, reads as rewritten:

"§ **18C-134. ~~Prize winners with outstanding debts to State agencies, delinquent taxes, or past-due child support; offset.~~ Setoff for debt collection against lottery prizes.**

~~(a) Before paying a prize of six hundred dollars ($600.00) or more to a person who claims to have won the prize, the Commission shall submit the name of that person to the Department of Revenue. The Department of Revenue shall, within 10 days after receiving the name of the person, identify whether that person owes a debt to a State~~

~~agency as provided in the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall notify the Commission of the amount of the prize subject to debt set-off. The Commission shall remit the amount identified by the Department of Revenue to the Department, and shall pay any remaining funds from the prize to the prizewinner.~~

~~(b) Except as provided in this section, the provisions of Chapter 105A of the General Statutes apply to the funds identified by the Department of Revenue and remitted by the Commission to the Department.~~

(a) Purpose. – The Commission must establish a debt set-off program by which lottery prize payments may be used to satisfy a debt owed or collected by a claimant agency that is at least fifty dollars ($50.00). The collection remedy under this section is in addition to and not in substitution for any other remedy available by law.

(b) Notification. – A claimant agency seeking to attempt collection of a debt through setoff must notify the Commission in writing and supply information necessary to identify the debtor. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. The agency must notify the Commission in writing when a debt has been paid or is no longer owed the agency. A local agency may not submit a debt for collection under this section until it has met the requirements of G.S. 105A-5, and it must submit the debt to the Commission through one of the entities listed in G.S. 105A-3(b1).

(c) Setoff. – The Commission must match the information submitted by the claimant agency with persons who are entitled to a State lottery prize payment in an amount of six hundred dollars ($600.00) or more. If there is a match, the Commission must set off the debt against the lottery winnings to which the debtor would otherwise be entitled. When there are multiple claims to be set off, the priority in claims to set off is the same as provided in G.S. 105A-12. The winnings that exceed the amount of the debt, if any, must be paid to that person. The Commission must mail the debtor written notice that the setoff has occurred and must transfer the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

(d) Collection Assistance Fee. – To recover the costs incurred by the Commission in collecting debts under this section, a collection assistance fee of five dollars ($5.00) may be imposed on each debt collected through setoff. The Commission must collect this fee as part of the debt and retain it. To recover the costs incurred by local agencies in submitting debts for collection under this section, a collection assistance fee of fifteen dollars ($15.00) may be imposed on each local agency debt collected through setoff. The Commission must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The collection assistance fees do not apply to child support debts. If the Commission is able to collect only part of a debt through setoff, the Commission's collection assistance fee has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt.

(e) Confidentiality. – Notwithstanding any confidentiality statute of a claimant agency, the exchange of information among the Commission, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this section is lawful. The information an agency or organization obtains from the Commission in accordance with the exemption in this subsection may be used

by the agency or organization only in the pursuit of its debt collection duties and practices.

(f) Definitions. – The definitions in G.S. 105A-2 apply in this section."

SECTION 31.1.(l) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-140, as enacted by that act, reads as rewritten:

"§ **18C-140. Contracting with lottery game retailers.**

The Commission may contract with lottery game retailers to sell tickets or shares for lottery games upon such terms and conditions as it considers appropriate. The contract entered into between the Commission and the lottery game retailer shall be considered a permit for purposes of Chapter 18B of the General Statutes. No contract to act as a lottery game retailer is assignable or transferable. All contracts with lottery game retailers shall provide that the Director may terminate the contract if the lottery game retailer ~~knowingly~~ violates a provision of this Chapter."

SECTION 31.1.(m) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-141(b), as enacted by that act, reads as rewritten:

"(b) The Director may not recommend contracting with any of the following:

(1) A natural person under 21 years of age. This minimum age shall not prohibit employees of a lottery game retailer who are under 21 years of age from selling lottery tickets or shares during their employment.

(2) A person who would be engaged exclusively in the business of selling lottery tickets or shares or operating electronic computer terminals or other devices solely for entertainment.

(3) A person who is not current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties owed to the State, excluding items under formal appeal under applicable statutes. Upon request of the Director, the Department of Revenue shall provide this information about a specific person to the Commission.

(4) A person who resides in the same household as a member of the Commission, the Director, or any other employee of the Commission."

SECTION 31.1.(n) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-142, as enacted by that act, reads as rewritten:

"§ **18C-142. Compensation for lottery game retailers.**

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be ~~six percent (6%)~~ seven percent (7%) of the retail price of the tickets or shares sold for each lottery game. The Commission shall ~~authorize an incentive bonus of up to one percent (1%) of the retail price of the tickets or shares sold based on~~ require submission of reports and remission of lottery revenues to the Commission on a timely basis."

SECTION 31.1.(o) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-143, as enacted by that act, reads as rewritten:

"§ **18C-143. Responsibilities of lottery game retailers.**

(a) A lottery game retailer shall comply with all provisions of this Article and the contract with the Commission.

(b) A lottery game retailer shall sell no lottery tickets or shares unless the retailer conspicuously displays a certificate of authority, signed by the Director, to sell lottery tickets or shares. The Commission shall issue a certificate of authority to each lottery game retailer for purposes of display for each retail outlet owned or operated by the lottery game retailer. No certificate is assignable or transferable.

(c) A lottery game retailer shall furnish an appropriate bond or letter of credit, if so requested by the Director. The Commission may authorize the Director to purchase blanket bonds covering the activities of any or all lottery game retailers.

(d) The Commission shall adopt rules to establish procedures governing how the lottery game retailers:

(1) Account for all tickets or shares in their custody, including tickets and shares sold.

(2) Account for the money collected from the sale of tickets and shares.

(3) Remit funds to the Commission, provided that all payments shall be in the form of electronic fund transfers or other recorded financial instruments as authorized by the Commission and approved by the Director.

(e) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, to any member or employee of the Commission, or to any member of the immediate family residing in the same household as one of these individuals."

SECTION 31.1.(p) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-151, as enacted by that act, reads as rewritten:

"§ **18C-151. Contracts.**

(a) ~~Article 8 of Chapter 143 of the General Statutes shall apply to all contracts entered into by the Commission, including the provisions relating to minority participation goals, and the Commission shall be considered a political subdivision of the State for those purposes of contracting under Article 8 of Chapter 143 of the General Statutes. Contracts for the provision of services to the Commission shall be treated as a contract for the purchase of apparatus, supplies, materials, or equipment. The bonding requirements of G.S. 143-129(b) for construction contracts shall apply to all contracts of the Commission and may be waived at the discretion of the Commission.~~ Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of ninety thousand dollars ($90,000) or more may be awarded by the Commission only after the following have occurred:

(1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:

a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.

b. The time and place for opening of the proposals.

c. A statement reserving to the Commission the right to reject any or all proposals.

(2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.

(3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.

(4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.

(5) The Commission may not award a contract to a lottery vendor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.

(6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery vendors.

(7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.

(8) The Commission shall award the contract to the responsible lottery vendor who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor with whom the Commission has previously contracted for the same purposes.

(c) ~~Before a contract required to be let under G.S. 143-129 is awarded, the Director shall conduct an investigation of all of the following:~~ Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:

(1) The vendor to whom the contract is to be awarded.

(2) Any parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(3) All shareholders with a five percent (5%) or more interest in the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(4) All officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-149. Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery system vendor nor any applicant for a contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals."

SECTION 31.1.(q) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-152, as enacted by that act, reads as rewritten:

"§ **18C-152. Investigation of lottery vendors.**

(a) Lottery vendors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures ~~by lottery vendors to ensure that the vendors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery vendors.~~ of information required to be disclosed under subsection (c) of this section by lottery vendors to ensure that the vendors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery vendors. Information shall be disclosed for the following:

(1) If the vendor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.

(2) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.

(3) If the vendor is an association, the members, officers, and directors.

(4) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(5) For any vendor, any person who can exercise control or authority, or both, on behalf of the vendor.

(c) For purposes of this subsection, the term "vendor" shall include the vendor and each of the persons applicable under subsection (b) of this section. At a minimum, the vendor required to disclose information for a thorough background investigation under G.S. 18C-151 shall do all of the following:

(1) Disclose the vendor's name, phone number, and address.

(2) Disclose all the states and jurisdictions in which the vendor does business and the nature of the business for each state or jurisdiction.

(3) Disclose all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.

(4) Disclose all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked

or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.

(5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a minor traffic violation.

(6) Disclose the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor.

(7) If at least twenty-five percent (25%) of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.

~~(c)~~(d) All documents compiled by the Director in conducting the investigation of the lottery vendors shall be held as confidential information under Chapter ~~132.~~132 of the General Statutes."

SECTION 31.1.(r) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-162, as enacted by that act, reads as rewritten:

"§ **18C-162. Allocation of revenues.**

(a) To the extent practicable, the Commission shall allocate revenues to the North Carolina State Lottery Fund in the following manner:

(1) At least fifty percent (50%) of the total annual revenues, as described in this Chapter, shall be returned to the public in the form of prizes.

~~(2) At least thirty-four percent (34%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.~~

~~(3) No more than sixteen percent (16%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery.~~

(2) At least thirty-five percent (35%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.

(3) No more than eight percent (8%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery. Advertising expenses shall not exceed one percent (1%) of the total annual revenues.

(4) No more than seven percent (7%) of the total annual revenues, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers.

~~(b) Unclaimed prize money held by the Commission in the North Carolina State Lottery Fund may be used by the Commission to enhance prizes in other lottery games.~~

~~(c) To the extent that the expenses of the Commission are less than sixteen percent (16%) of total annual revenues, the Commission may allocate any surplus funds:~~

~~(1) To increase prize payments; or~~

~~(2) To the benefit of the public purposes as described in this Chapter.~~

(b) To the extent that the expenses of the Commission are less than eight percent (8%) of total annual revenues, the Commission may allocate any surplus funds:

(1) To increase prize payments; or

(2) To the benefit of the public purposes as described in this Chapter.

(c) Unclaimed prize money shall be held separate and apart from the other revenues and allocated as follows:

(1) Fifty percent (50%) to enhance prizes under subdivision (a)(1) of this section.

(2) Fifty percent (50%) to the Education Lottery Fund to be allocated in accordance with G.S. 18C-164(c)."

SECTION 31.1.(s) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-163, as enacted by that act, reads as rewritten:

"§ **18C-163. Expenses of the Lottery.**

Expenses of the Lottery may include any of the following:

(1) The costs incurred in operating and administering the Commission, including initial start-up costs.

(2) The costs resulting from any contracts entered into for the purchase or lease of goods or services required by the Commission.

(3) ~~The compensation paid to lottery game retailers.~~ A transfer of one million dollars ($1,000,000) annually to the Department of Health and Human Services for gambling addiction education and treatment programs.

(4) The costs of supplies, materials, tickets, independent studies and audits, data transmission, advertising, promotion, incentives, public relations, communications, bonding for lottery game retailers, printing, and distribution of tickets and shares.

(5) The costs of reimbursing other governmental entities for services provided to the Commission.

(6) The costs for any other goods and services needed to accomplish the purposes of this Chapter."

SECTION 31.1.(t) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-164, as enacted by that act, reads as rewritten:

"§ **18C-164. Transfer of net revenues.**

(a) The funds remaining in the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund. The net revenues of the North Carolina State Lottery Fund shall be transferred periodically to the Education Lottery Fund, which shall be created in the State treasury.

~~(b) On June 30 of each year, the Commission shall distribute the net revenue of the North Carolina State Lottery Fund as follows:~~

~~(1) Fifty percent (50%) shall be transferred to the Public School Building Capital Fund created in Article 38A of Chapter 115C of the General Statutes and is appropriated for expenditure in accordance with that Article. It is the purpose of this subdivision for counties to appropriate funds generated under this subdivision to increase the level of county spending for public school capital outlay purposes other than the retirement of indebtedness. A county must continue to spend for public~~

~~school capital outlay purposes the same amount of money it would have spent for those purposes if it had not received the monies appropriated under this subdivision.~~

~~(2) Twenty-five percent (25%) shall be transferred to the State Educational Assistance Authority and is appropriated to fund scholarships pursuant to Article 35A of Chapter 115C of the General Statutes.~~

~~(3) Twenty-five percent (25%) shall be transferred to a special revenue fund to be established in the State treasury and to be known as the Education Enhancement Fund. This fund shall be subject to appropriation by the General Assembly and shall be used to further the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential.~~

(b) From the Education Lottery Fund, the Commission shall transfer a sum equal to five percent (5%) of the net revenue of the prior year to the Education Lottery Reserve Fund. A special revenue fund for this purpose shall be established in the State treasury to be known as the Education Lottery Reserve Fund, and that fund shall be capped at fifty million dollars ($50,000,000). Monies in the Education Lottery Reserve Fund may be appropriated only as provided in subsection (e) of this section.

(c) The Commission shall distribute the remaining net revenue of the Education Lottery Fund, as follows, in the following manner:

(1) A sum equal to fifty percent (50%) to support reduction of class size in early grades to class size allotments not exceeding 1:18 in order to eliminate achievement gaps and to support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.

(2) A sum equal to forty percent (40%) to the Public School Building Capital Fund in accordance with G.S. 115C-546.2.

(3) A sum equal to ten percent (10%) to the State Educational Assistance Authority to fund college and university scholarships in accordance with Article 35A of Chapter 115C of the General Statutes.

(d) Of the sums transferred under subsection (c) of this section, the General Assembly shall appropriate the funds annually based upon estimates of lottery net revenue to the Education Lottery Fund provided by the Office of State Budget and Management and the Fiscal Research Division of the North Carolina General Assembly.

(e) If the actual net revenues are less than the appropriation for that given year, then the Governor may transfer from the Education Lottery Reserve Fund an amount sufficient to equal the appropriation by the General Assembly. If the monies available in the Education Lottery Reserve Fund are insufficient to reach a full appropriation, the Governor shall transfer monies in order of priority, to the following:

(1) To support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.

(2) To reduce class size.

(3) To provide financial aid for needy students to attend college.

(4) To the Public School Building Capital Fund to be spent in accordance with this section.

(f) If the actual net revenues exceed the amounts appropriated in that fiscal year, the excess net revenues shall remain in the Education Lottery Fund, and then be transferred as follows:

(1) Fifty percent (50%) to the Public School Building Capital Fund to be spent in accordance with this section.

(2) Fifty percent (50%) to the State Educational Assistance Authority to be spent in accordance with this section."

SECTION 31.1.(t1) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-170, as enacted by that act, reads as rewritten:

"§ **18C-170. Preemption of local regulation.**

A county or municipality shall not enact any ~~local law, ordinance,~~ ordinance or regulation relating to the Lottery, and this Chapter preempts all existing county or municipal ~~laws, ordinances,~~ ordinances or regulations that would impose additional restrictions or requirements in the operation of the Lottery. To the extent that this Chapter conflicts with any local act, this Chapter prevails to the extent of the conflict."

SECTION 31.1.(u) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-171, as enacted by that act, reads as rewritten:

"§ **18C-171. Lawful activity.**

Other than this Chapter, ~~any other State or local law, ordinance, or regulation providing any penalty, disability, restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this Chapter.~~any other public or local law, ordinance, or regulation providing any penalty, restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares, or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this Chapter where the penalty, restriction, regulation, or prohibition applies only to the Lottery as operated by the North Carolina State Lottery Commission."

SECTION 31.1.(v) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 115C-499.3, as enacted by that act, reads as rewritten:

"§ **115C-499.3. Scholarship amounts; amounts dependent on net income available.**

(a) Subject to the amount of net income available ~~under G.S. 18C-164(b)(2),~~ Chapter 18C of the General Statutes, a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs.

(b) Subject to the maximum amounts provided in this section, the Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the amount of net income available under ~~G.S. 18C-164(b)(2).~~ Chapter 18C of the General Statutes. If the net income available is not sufficient to fully fund the scholarships to the maximum amount, all scholarships shall be reduced equally, to the extent practicable, so that every eligible applicant shall receive ~~the same~~ a proportionate scholarship amount.

(c) The minimum award of a scholarship under this Article shall be one hundred dollars ($100.00)."

SECTION 31.1.(v1) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 115C-499.4, as enacted by that act, is amended by adding new subsections to read:

"(c) The Authority may use up to one and one-half percent (1.5%) of the funds transferred in accordance with Chapter 18C of the General Statutes for administrative purposes.

(d) Scholarship funds unexpended shall remain available for future scholarships to be awarded under this Article."

SECTION 31.1.(v2) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 14-289, as rewritten by Section 3(a) of that act, further reads as rewritten:

"§ **14-289. Advertising lotteries.**

Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if anyone by writing or printing or by circular or letter or in any other way, advertises or publishes an account of a lottery, whether within or without this State, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a Class 2 misdemeanor. News medium as defined in G.S. 8-53.11 shall be exempt from this section provided the publishing is in connection with a lawful activity of the news medium."

SECTION 31.1.(v3) If House Bill 1023, 2005 Regular Session, becomes law, then Section 4 of that act is repealed.

SECTION 31.1.(w) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, reads as rewritten:

"§ **114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.**

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any prospective lottery ~~retailer or lottery contractor.~~ vendor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the prospective lottery ~~retailer or lottery contractor,~~ vendor, a form signed by the prospective employee of the Commission, or of the prospective ~~lottery retailer or lottery contractor~~ vendor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the prospective employee of the Commission, or prospective lottery ~~retailer or lottery contractor,~~ vendor, shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The North Carolina State Lottery Commission and its Director ~~shall keep all information obtained pursuant to this section confidential.~~ shall remit any fingerprint information retained by the Commission to alcohol law enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

SECTION 31.1.(w1) If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 116B-54(f), as enacted by Section 7 of that act, reads as rewritten:

"(f) ~~Prizes that remain unclaimed after the period set by the Commission for claiming those prizes, as provided in G.S. 143D-145(a)(6), are not abandoned property.~~ A lottery prize that remains unclaimed after the period set by the North Carolina State Lottery Commission for claiming those prizes shall not constitute abandoned property."

SECTION 31.1.(x) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.1.(a)** G.S. 18B-101 is amended by adding a new subdivision to read:

"(8a) 'Lottery law' or 'lottery laws' means any provision of Chapter 18C of the General Statutes and the rules issued by the Lottery Commission under the authority of Chapter 18C of the General Statutes.""

SECTION 31.1.(y) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.1.(b)** G.S. 18B-500(b) reads as rewritten:

"(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC ~~laws~~ laws, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor.""

SECTION 31.1.(z) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.1.(c)** G.S. 18B-500(d) reads as rewritten:

"(d) Service of Commission Orders. – Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.""

SECTION 31.1.(aa) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.4.** Effective for taxable years beginning on or after January 1, 2005, G.S. 105-134.5(b) reads as rewritten:

"(b) Nonresidents. – For nonresident individuals, the term "North Carolina taxable income" means the taxpayer's taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this ~~State or~~ State, is derived from a business, trade, profession, or occupation carried on in this ~~State.~~State, or is derived from gambling activities in this State.""

SECTION 31.1.(bb) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.2.(a)** effective for taxable years beginning on or after January 1, 2005, Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-163.2B. North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings that are reportable to the Internal Revenue Service under section 3406 of the Code. The amount of taxes to be withheld is seven percent (7%) of the winnings. The Commission must file a return and pay the withheld taxes in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary."

SECTION 31.1.(cc) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.2.(b)** G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(33) To provide to the North Carolina State Lottery Commission the information required under G.S. 18C-141.""

SECTION 31.1.(dd) If House Bill 1023, 2005 Regular Session, becomes law, the that act is amended by adding a new section to read:

"**SECTION 10.3.** G.S. 105-134 reads as rewritten:

"§ **105-134. Purpose.**

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this ~~State or deriving~~ State, deriving income from a business, trade, profession, or occupation carried on in this ~~State.~~State, or deriving income from gambling activities in this State.""

SECTION 31.1.(ee) If House Bill 1023, 2005 Regular Session, becomes law, then Section 11 of that act is repealed.

SECTION 31.1.(ff) If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

"**SECTION 11.1.** G.S. 150B-1(c) reads as rewritten:

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

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.

(7) The North Carolina State Lottery.""

SECTION 31.1.(gg) If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

"**SECTION 15.1.** Notwithstanding G.S. 18C-164, as enacted by Section 1 of this act, all net revenues for fiscal year 2005-2006 shall be transferred to the Education Lottery Reserve Fund."

SECTION 31.1.(hh) If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

"**SECTION 15.2.** G.S. 115C-546.2 is amended by adding a new subsection to read:

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

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

(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the effective State average tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

a. "Effective county tax rate" means the actual county tax rate multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

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

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

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

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

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

SECTION 31.1.(ii) If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

"**SECTION 15.3.** Notwithstanding G.S. 18C-162(c), the General Assembly shall transfer the unclaimed prize money from the North Carolina State Lottery Fund to the Escheat Fund in an amount equal to the principal transferred from the Escheat Fund for scholarships in fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007 until the

Escheat Fund is repaid for any amounts of principal appropriated in those fiscal years, if any."

PART XXXIII. SALES TAX CHANGES

SALES TAX CHANGES

SECTION 33.1. Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284 and Section 9.1 of S.L. 2005-144, reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~the date that Senate Bill 622, 2005 Regular Session, the 2005 Appropriations Act, becomes law. In no event is the tax extended beyond December 31, 2005.~~ July 1, 2007. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 33.2. Subdivisions (4a) and (4b) of G.S. 105-164.3 are recodified as subdivisions (4b) and (4c) respectively.

SECTION 33.3. G.S. 105-164.3, as amended by Section 33.2 of this part, reads as rewritten:

"§ **105-164.3. Definitions.**

The following definitions apply in this Article:

…

(1a) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

…

(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.

…

(4d) Computer supply. – An item that is considered a 'school computer supply' under the Streamlined Agreement.

…

(10) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco ~~products,~~ product, as defined in G.S. 105-113.4.

…

(37a) Satellite digital audio radio service. – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.

(37b) School supply. – An item that is commonly used by a student in the course of study and is considered a 'school supply', a 'school art

supply', or 'school instructional material' under the Streamlined Agreement.

…

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005."

SECTION 33.4.(a) G.S. 105-164.4(a), as amended by Section 33.1 of this part, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4.5%).

…

(4c) The ~~rate of six percent (6%)~~combined general rate applies to the gross receipts derived from providing telecommunications service. A person who provides telecommunications service is considered a retailer under this Article. Telecommunications service is taxed in accordance with G.S. 105-164.4C.

…

(6) The ~~rate of five percent (5%)~~combined general rate applies to the gross receipts derived from providing ~~direct-to-home satellite service to subscribers in this State.~~any of the following broadcast services to a subscriber in this State. A person engaged in the business of providing ~~direct-to-home satellite service~~any of these services is considered a retailer under this ~~Article.~~Article:

a. Direct-to-home satellite service.

b. Reserved.

…

(7) The ~~rate of six percent (6%)~~combined general rate applies to the sales price of spirituous liquor other than mixed beverages. As used in this subdivision, the terms 'spirituous liquor' and 'mixed beverage' have the meanings provided in G.S. 18B-101.

…."

SECTION 33.4.(b) G.S. 105-164.4(a), as amended by Section 33.1 of this part and subsection (a) of this section, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4.5%).

…

(1b) The rate of three percent (3%) applies to the sales price of each ~~aircraft, boat, railway car, or locomotive~~ aircraft or boat sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

~~(1c) The rate of one percent (1%) applies to the sales price of the following articles:~~

~~a. Horses or mules by whomsoever sold.~~

~~b. Semen to be used in the artificial insemination of animals.~~

~~c. Sales of fuel, other than electricity, to farmers to be used by them for any farm purposes other than preparing food, heating~~

~~dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed by this subdivision.~~

~~d. Sales of fuel, other than electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.~~

~~e. Sales of fuel, other than electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.~~

~~f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.~~

~~(1d) The rate of one percent (1%) applies to the sales price of the articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article. As used in G.S. 105-164.4A and G.S. 105-187.51, the term "accessories" does not include electricity.~~

~~a. through k. Recodified as § 105-164.4A by Session Laws 1999-360, s. 3(a), effective August 4, 1999.~~

~~(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.~~

…

(6) The combined general rate applies to the gross receipts derived from providing any of the following broadcast services to a subscriber in this State. A person engaged in the business of providing any of these services is considered a retailer under this Article:

a. Direct-to-home satellite service.

b. Cable service.

(6a) The general rate applies to the gross receipts derived from providing satellite digital audio radio service. For services received by a mobile or portable station, the service is sourced to the subscriber's business or home address. A person engaged in the business of providing satellite digital audio radio service is a retailer under this Article.

…."

SECTION 33.5. G.S. 105-164.4A is repealed.

SECTION 33.6. G.S. 105-164.4C(b)(2) reads as rewritten:

"(2) Charges for directory assistance, directory listing that is not yellow-page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services."

SECTION 33.7. G.S. 105-164.4C(c)(11) is repealed.

SECTION 33.8. G.S. 105-164.6 reads as rewritten:

"§ **105-164.6. ~~Imposition of~~Complementary use tax.**

(a) Tax. – An excise tax ~~at the following percentage rates is imposed on the storage, use, or consumption in this State of tangible personal property purchased inside or outside the State for storage, use, or consumption in the State:~~at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

(1) ~~At the applicable percentage rate of the purchase price of each item or article of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is stored, used, or consumed.~~Tangible personal property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.

(2) ~~At the applicable percentage rate of the monthly lease or rental price paid, contracted, or agreed to be paid by the lessee or renter to the owner of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a lease or rental of the property that is stored, used, or consumed.~~Tangible personal property leased or rented inside or outside this State for storage, use, or consumption in this State.

(3) Services sourced to this State.

(b) ~~An excise tax at the general rate of tax set in G.S. 105-164.4 is imposed on the purchase price of tangible personal property purchased inside or outside the State that~~Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or who purchases a service. If the property purchased becomes a part of a building or other structure in the ~~State. The purchaser of the property is liable for the tax. If the purchaser is a contractor, the contractor and owner are jointly and severally liable for the tax; if~~State and the purchaser is a ~~subcontractor, the subcontractor and contractor~~contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of ~~an owner or a contractor~~a contractor, a subcontractor, or an owner who did not purchase the property is satisfied ~~if the purchaser delivers to the owner or contractor before final settlement between them~~by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) ~~Where a retail sales tax has already been paid with respect to tangible personal property in this State by the purchaser thereof, the tax shall be credited upon the tax imposed by this Part. Where a retail sales and use tax is due and has been paid with respect to tangible personal property in another state by the purchaser for storage, use or consumption in this State, the tax shall be credited upon the tax imposed by this Part.~~Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales tax paid on the item to another state. If the amount of tax paid to ~~another~~the other state is less than the amount of tax imposed by this ~~Part, the purchaser shall pay to the Secretary an amount sufficient to make the tax paid to the other state and this State equal to the amount imposed by this Part. The Secretary of Revenue shall require such proof of payment of tax to another state as he deems necessary. No credit shall be given under this subsection for sales or use taxes paid in another state if that~~section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

~~(d) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this Article and the liability shall not be extinguished until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this Article shall be prima facie sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased the property.~~

~~(e) Except as provided herein the tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license, privilege or other taxes.~~

(f) Registration. – Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department.

The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

SECTION 33.9. G.S. 105-164.13 reads as rewritten:

"§ **105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

…

(1) ~~Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds~~Any of the following items sold to a farmer for ~~agricultural purposes.~~use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.

a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, and seeds.

b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term 'machinery' includes implements that have moving parts or are

operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.

c. A horse or mule.

d. Fuel other than electricity.

(1a) A container sold to a farmer, as defined in subdivision (1) of this section, used for a purpose set out in that subdivision or in packaging and transporting the farmer's product for sale.

…

(2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.

c. Defoliants for use on cotton or other crops.

d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

e. Semen.

…

(4c) Any of the ~~following:~~following items concerning the housing, raising, or feeding of animals:

a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities.

b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.

c. Commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.

(4d) Any of the following tobacco items:

a. The lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.

b. A metal flue sold for use in curing tobacco, whether the flue is attached to a handfired furnace or used in connection with a mechanical burner.

c. A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

(4e) A grain, feed, or soybean storage facility, and parts and accessories attached to the facility.

…

(5a) ~~Mill machinery and mill machinery parts and accessories~~ Products that are subject to tax under Article 5F of this Chapter.

(5b) Sales to a telephone company regularly engaged in providing telephone service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.

(5c) Sales of towers, broadcasting equipment, and parts and accessories attached to the equipment to a radio or television company licensed by the Federal Communications Commission.

(5d) Sales of broadcasting equipment and parts and accessories attached to the equipment to a cable service provider. For the purposes of this subdivision, 'broadcasting equipment' does not include cable.

…

(10) Sales of the following to commercial laundries or to pressing and dry cleaning ~~establishments of articles~~establishments:

a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.

c. Fuel, other than electricity, used in the direct performance of the laundering or the pressing and cleaning service.

(10a) Sales of the following to a major recycling ~~facility of (i) lubricants~~facility:

a. Lubricants and other additives for motor vehicles or machinery and equipment used at the ~~facility and (ii) materials,~~facility.

b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

~~(10b)~~ c. ~~Sales to a major recycling facility of electricity~~Electricity used at the facility.

…

~~(18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars ($1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered"~~

~~shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.~~

…

(45) Sales of the following items to an interstate passenger air carrier ~~or an interstate air courier~~ for use at its ~~hub: aircraft lubricants, aircraft repair parts, and aircraft accessories.~~hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Aircraft simulators for flight crew training.

…

(45b) Sales of the following items to an interstate air courier for use at its hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.

…."

SECTION 33.10. G.S. 105-164.13B(a) reads as rewritten:

"(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

~~(1) Alcoholic beverages, as defined in G.S. 105-113.68.~~

(2) Dietary supplements.

(3) Food sold through a vending machine.

(4) Prepared food.

(5) Soft drinks.

(6) Repealed.

(7) Candy."

SECTION 33.11. G.S. 105-164.13C(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the following items of tangible personal property if sold between 12:01A.M. on the first Friday of August and 11:59 P.M. the following Sunday:

(1) Clothing with a sales price of one hundred dollars ($100.00) or less per item.

(2) School supplies with a sales price of one hundred dollars ($100.00) or less per item.

(3) Computers with a sales price of three thousand five hundred dollars ($3,500) or less per item.

(3a) Computer supplies with a sales price of two hundred fifty dollars ($250.00) or less per item.

(4) Sport or recreational equipment with a sales price of fifty dollars ($50.00) or less per item."

SECTION 33.12. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories ~~purchased in this State~~ for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 33.13. Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 33.14. Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.21B. Credit for local cable television franchise taxes.**

A cable service provider is allowed a credit against the tax imposed by G.S. 105-164.4(a)(6) for the amount of local franchise tax payable under G.S. 153A-154 and G.S. 160A-214 on its gross receipts for cable service. To comply with

G.S. 105-164.4(a)(6) and apply the credit allowed under this section, a cable service provider may collect tax from its subscribers at the rate set in G.S. 105-164.4(a)(6) less the rate of the local franchise tax payable on its gross receipts for cable service."

SECTION 33.15. G.S. 105-164.28 reads as rewritten:

"§ **105-164.28. Certificate of resale.**

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) For a sale made in person, the certificate is signed by the ~~purchaser,~~ purchaser and states the purchaser's name, address, ~~and~~ registration number, and ~~describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~type of business.

(2) For a sale made in person, the ~~purchaser is engaged in the business of selling~~ tangible personal property ~~of the type sold.~~sold is the type of property typically sold by the type of business stated on the certificate.

(3) For a sale made over the Internet or by other remote means, ~~the sales tax registration number given by the purchaser matches the number on the Department's registry.~~the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) ~~Liabilities.~~ Purchaser's Liability. – A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. ~~A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.~~"

SECTION 33.16. G.S. 105-164.42B(1) reads as rewritten:

"§ **105-164.42B. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – ~~The~~ Streamlined ~~Sales and Use Tax Agreement.~~Agreement, as defined in G.S. 105-164.3.

…."

SECTION 33.17. Part 7A of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.42K. Registration and effect of registration.**

Registration under the Agreement satisfies the registration requirements under this Article. A seller who registers under the Agreement within 12 months after the State becomes a member of the Agreement and who meets the following conditions is not subject to assessment for sales tax for any period before the effective date of the seller's registration:

(1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement.

(2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit.

(3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months."

SECTION 33.18. Part 7A of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.42L. Databases on taxing jurisdictions.**

The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A seller that relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases."

SECTION 33.19. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a) (4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and ~~twenty-six hundredths percent (18.26%)~~three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the 'freeze deduction.' The Secretary must distribute the specified percentage of the proceeds, less the 'freeze deduction' among the cities in accordance with this section."

SECTION 33.20. The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

~~Mill Machinery.~~ Manufacturing Fuel and Certain Machinery and Equipment."

SECTION 33.21. Article 5F of Chapter 105 of the General Statutes is amended by adding new sections to read:

"**§ 105-187.51A. Tax imposed on manufacturing fuel.**

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is one percent (1%) of the sales price of the fuel. The tax does not apply to electricity or piped natural gas.

"**§ 105-187.51B. Tax imposed on recycling equipment.**

(a) Tax. – A privilege tax is imposed on a major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

(1) Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

(2) Port and dock facilities.

(3) Rail equipment.

(4) Material handling equipment.

(b) Rate. – The tax is one percent (1%) of the sales price of the tangible personal property. The maximum tax is eighty dollars ($80.00) per article."

SECTION 33.22. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

The privilege ~~tax this Article imposes on a person listed in G.S 105-187.51 is an additional~~taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of ~~this tax~~these taxes is the same as the State use tax imposed by Article 5 of this Chapter."

SECTION 33.23. G.S. 105-467(a) is amended by adding a new subdivision to read:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the transactions listed in this subsection. The

sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

…

(7) The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a)."

SECTION 33.24. Section 18 of S.L. 2000-120, as amended by Section 44.1 of S.L. 2003-284, reads as rewritten:

"**Section 18.** Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, ~~2005.~~ 2010. The remainder of this act is effective when it becomes law."

SECTION 33.25. G.S. 105-151.21(b) reads as rewritten:

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

(1) Farm machinery. – Machinery ~~subject to~~ exempt from State sales tax ~~at the rate of one percent (1%)~~ under G.S. ~~105-164.4A.~~105-164.13(1)b.

(2) Property taxes. – The principal amount of taxes levied and assessed by a taxing unit under Subchapter II of this Chapter. The term does not include costs, penalties, interest, or other charges that may be added to the principal amount.

(3) Taxing unit. – Defined in G.S. 105-273."

SECTION 33.26. Subdivision (b)(5) of Section 5 of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws and S.L. 2001-347, reads as rewritten:

"(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part:

…

(5) Prepared Food and Beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 33.27. Subdivision (a)(2) of Section 2 of Chapter 413 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. In addition, the following definitions apply in this act:

…

(2) Prepared food and beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 33.28. Section 2 of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws, Chapter 177 of the 1991 Session Laws, and S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act.

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax.

(2) Prepared food and beverages. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 33.29. Subsection (b) of Section 1 of Chapter 449 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.~~In addition,~~ For the purposes of this section, the term 'prepared food and beverages' ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:

(1) Prepared food, as defined in G.S. 105-164.3.

(2) An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

~~The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.~~"

SECTION 33.30. Subdivision (3) of Section 2 of Chapter 594 of the 1991 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

…

(3) Prepared food and beverage. – The term ~~has the same meaning as the term "prepared food" in G.S. 105-164.3.~~includes the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 33.31. Section 3.1 of S.L. 2001-347, as amended by Section 13 of S.L. 2003-416, reads as rewritten:

"**SECTION 3.1.** Part 1 of this act is effective when it becomes ~~law and expires January 1, 2006, unless one of the following occurs: (i) 15 states have adopted the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined resident population equal to at least ten percent (10%) of the national resident population, as determined by the 2000 federal decennial census, have adopted the Agreement.~~law."

SECTION 33.32. The Revenue Laws Study Committee shall study the issues listed in this section. The Committee may make an interim report on these issues, including any recommendations for legislation, to the 2006 Regular Session of the 2005 General Assembly and shall make a final report to the 2007 General Assembly.

(1) The equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

(2) The application of sales and use tax to maintenance agreements. It is the intent of the General Assembly to apply the sales and use tax, in some manner, to maintenance agreements beginning July 1, 2006.

SECTION 33.33. S.L. 2004-123 is reenacted and is amended by adding a new section to read:

"**SECTION 3.1.** This act applies to Dare County only."

SECTION 33.34. Sections 33.1, 33.24, and 33.31 through 33.34 of this part are effective when they become law. Sections 33.4(b), 33.5, 33.9, 33.12, 33.14, and 33.20 through 33.23 become effective January 1, 2006. Section 33.25 of this part is effective for taxable years beginning on or after January 1, 2006. The remainder of this part becomes effective October 1, 2005. For prepayments of telecommunications and direct-to-home satellite services, the first billing period is considered to start on or after November 1, 2005. For prepayments of satellite digital audio radio services, the first billing period is considered to start on or after February 1, 2006. Section 33.19 of this part applies to distributions to cities of the net proceeds of the sales tax imposed on telecommunications service under G.S. 105-164.4(a)(4c) collected during calendar quarters that begin on or after January 1, 2006.

PART XXXIV. TOBACCO TAX RATE CHANGES

TOBACCO TAX CHANGES

SECTION 34.1.(a) G.S. 105-113.5 reads as rewritten:

"§ **105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~two and one-half mills~~ one and one-half cents (1.50¢) per individual cigarette."

SECTION 34.1.(b) G.S. 105-113.5, as amended by subsection (a) of this section, reads as rewritten:

"§ **105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~one and one-half cents (1.50¢)~~ one and three-fourths cents (1.75¢) per individual cigarette."

SECTION 34.1.(c) G.S. 105-113.35(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of ~~two percent (2%)~~ three percent (3%) of the cost price of the products. This tax does not apply to the following:

(1) A tobacco product sold outside the State.

(2) A tobacco product sold to the federal government.

(3) A sample tobacco product distributed without charge."

SECTION 34.1.(d) Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-16.6. Assignment to the State of rights to tobacco manufacturer escrow funds.**

A tobacco product manufacturer that elects to place funds into escrow pursuant to G.S. 66-291(a)(2) may make an assignment of its interest in the funds to the benefit of the State. The assignment applies to all funds, and any earnings and appreciation, that are in the escrow account at the time of the assignment or are subsequently deposited into the escrow account and are not released under the provisions of subdivision (1) or (2) of G.S. 66-291(b) at any time on or before the expiration of 10 years from the date

of assignment. The assignment is irrevocable and shall include any reversionary interest in the escrow account and the funds therein that would otherwise belong to the tobacco manufacturer, including the right to receive the escrowed funds pursuant to G.S. 66-291(b)(3).

An assignment of rights executed pursuant to this section shall be in writing and shall be signed by a duly authorized representative of the tobacco product manufacturer making the assignment. An assignment is effective upon delivery to the Attorney General and the financial institution where the escrow account is maintained."

SECTION 34.1.(e) Subsections (d) and (e) of this section are effective when they become law. Subsection (b) of this section becomes effective July 1, 2006. The remainder of this section becomes effective September 1, 2005. If a final judgment by a court of competent jurisdiction declares that G.S. 143-16.6, as enacted by this section, is invalid or unenforceable, then the statute is repealed, and any assignment made under it is void. If, as a result of a final judgment, it is determined that G.S. 143-16.6, as enacted by this section, would subject payments to this State by participating manufacturers under the Master Settlement Agreement, as defined in G.S. 66-290, to a Non-Participating Manufacturer Adjustment under Section IX of that Agreement, then G.S. 143-16.6 is repealed, and any assignment made under it is void.

PART XXXV. IRC UPDATE

IRC UPDATE

SECTION 35.1.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

…

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2004,~~January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date.~~date, but not including the amendments made to section 164 of the Code by section 501 of P.L. 108-357."

SECTION 35.1.(b) G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

…

(16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.

(17) The amount excluded from gross income under section 199 of the Code."

SECTION 35.1.(c) Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after May 1, 2004, that increase North Carolina taxable income for the 2004 taxable year become effective for taxable years beginning on or after January 1, 2005.

SECTION 35.1.(d) G.S. 105-228.90(b)(1b), as amended by subsection (a) of this section, reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

…

(1b) Code. – The Internal Revenue Code as enacted as of January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date, but not including the~~

~~amendments made to Section 164 of the Code by Section 501 of P.L. 108-357.~~date."

SECTION 35.1.(e) G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

…

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax or as state or local general sales tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.

…

(9) The amount excluded from gross income under section 199 of the Code."

SECTION 35.1.(f) Notwithstanding any other provision of law, a taxpayer whose federal taxable income for 2004 is reduced due to a charitable contribution of cash made in January 2005 for Indian Ocean tsunami relief efforts in accordance with P.L. 109-1 is not required to add back the amount of the deduction related to that contribution in determining North Carolina taxable income for 2004.

SECTION 35.1.(g) Subsections (b), (d), and (e) of this section become effective for taxable years beginning on or after January 1, 2005. The remainder of this section is effective when it becomes law.

PART XXXVI. INDIVIDUAL INCOME TAX CHANGES

INDIVIDUAL INCOME TAX RATE

SECTION 36.1.(a) The lead-in language of Section 39.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 39.1.** Effective for taxable years beginning on or after January 1, ~~2006,~~ 2008, G.S. 105-134.2(a) reads as rewritten:".

SECTION 36.1.(b) This section is effective when it becomes law.

PART XXXVIII. CORPORATE, EXCISE, AND INSURANCE TAX CHANGES

EQUALIZE GROSS PREMIUMS TAX

SECTION 38.4.(a) G.S. 105-228.5(d)(6) is repealed.

SECTION 38.4.(b) G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. – There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this ~~section. For each insurance company that is not a health maintenance organization, the rate~~ section and is applied to the company's premium tax liability for the taxable year. ~~For health maintenance organizations, the rate is applied to a premium tax liability for the taxable year calculated as if the corporation or organization were paying tax at the rate in~~

~~G.S. 105-228.5(d)(2).~~ In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) Additional taxes imposed by G.S. 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

SECTION 38.4.(c) Notwithstanding the provisions of G.S. 105-228.5(f), the following provisions apply to health maintenance organizations for the 2007 taxable year in lieu of the provisions of G.S. 105-228.5(f):

Health maintenance organizations that are subject to the tax imposed by G.S. 105-228.5 and have an estimated premium tax liability for the taxable year, not including the additional local fire and lightning tax, of ten thousand dollars ($10,000) or more for business done in North Carolina shall remit two estimated tax payments with each payment equal to fifty percent (50%) of the taxpayer's estimated premium tax liability for the 2007 taxable year. The first estimated payment is due on or before April 15, 2007, and the second estimated payment is due on or before June 15, 2007. The taxpayer must remit the balance by the following March 15 in the same manner provided in G.S. 105-228.5(e) for annual returns.

An underpayment of an estimated payment required by this subsection bears interest at the rate established under G.S. 105-241.1(i). Any overpayment bears interest as provided in G.S. 105-266(b) and, together with the interest, must be credited to the taxpayer and applied against the taxes imposed upon the company under G.S. 105-228.5.

The penalties provided in Article 9 of Chapter 105 of the General Statutes apply to the estimated tax payments required by this subsection.

SECTION 38.4.(d) This section is effective for taxable years beginning on or after January 1, 2007.

PART XXXIX. TAX INCENTIVES / FILM INDUSTRY JOBS INCENTIVES

FILM INDUSTRY JOBS INCENTIVES

SECTION 39.1.(a) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars ($7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(i) No Double Benefit. – A taxpayer may not claim a credit under this section for qualifying expenses for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(18).

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(b) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-151.29. Credit for qualifying expenses of a production company.**

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return

must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars ($7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(i) No Double Benefit. – A taxpayer may not claim a credit under this section for qualifying expenses for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-134.6(c)(9).

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

SECTION 39.1.(c) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(34) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film

Office of the Department of Commerce and with the regional film commissions and to publish the reports required under those sections."

SECTION 39.1.(d) G.S. 143B-434.4 is repealed.

SECTION 39.1.(e) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

…

(18) To the extent not included in federal taxable income, the amount of qualifying expenses for which the taxpayer claims a credit under G.S. 105-130.47."

SECTION 39.1.(f) G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

…

(9) The amount of qualifying expenses for which the taxpayer claims a credit under G.S. 105-130.47."

SECTION 39.1.(g) Subsection (d) of this section becomes effective July 1, 2005. The remainder of this section is effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005.

PART XL. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

INSURANCE REGULATORY CHARGE

SECTION 40.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2005 calendar year.

SECTION 40.1.(b) This section is effective when it becomes law.

REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 40.2.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2005.

SECTION 40.2.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2005-2006 fiscal year is two hundred thousand dollars ($200,000).

SECTION 40.2.(c) This section becomes effective July 1, 2005.

PART XLI. HEALTH AND HUMAN SERVICES FEES

NEWBORN SCREENING FEE

SECTION 41.1.(a) G.S. 130A-125(c) reads as rewritten:

"(c) ~~The Department may impose a fee for a laboratory test performed pursuant to this section by the State Public Health Laboratory. A fee for a test must be based on the actual cost of performing the test.~~ A fee of fourteen dollars ($14.00) applies to a

laboratory test performed by the State Public Health Laboratory performed pursuant to this section. Fees collected shall remain in the Department to be used to offset the cost of the Newborn Screening Program."

SECTION 41.1.(b) This section becomes effective August 15, 2005, and applies to laboratory tests performed on or after that date.

DIVISION OF FACILITY SERVICES FEES

SECTION 41.2.(a) G.S. 131D-2(b)(1), as amended by Section 10.40A.(i) of Senate Bill 622, 2005 General Assembly, reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter and rules adopted pursuant thereto, the Department shall issue a license for the balance of the calendar year. Licenses renewed under the authority of this section shall be valid for one year from the date of renewal unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~one hundred twenty-five dollars ($125.00).~~ two hundred fifty dollars ($250.00).The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~one hundred seventy-five dollars ($175.00)~~ three hundred fifty dollars ($350.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50). A license shall not be renewed if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;

b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:
   1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
   2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:
   1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
   2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 41.2.(b) G.S. 131E-77(d) reads as rewritten:

"(d) Upon receipt of an application for a license, the Department shall issue a license if it finds that the applicant complies with the provisions of this Article and the rules of the Commission. The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Facility Type	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
General Acute Hospitals:	1-49 beds	$~~125.00~~250.00	$~~6.25~~12.50
	50-99 beds	$~~175.00~~350.00	$~~6.25~~12.50
	100-199 beds	$~~225.00~~450.00	$~~6.25~~12.50

200-399 beds	$~~275.00~~550.00	$~~6.25~~12.50
400-699 beds	$~~375.00~~750.00	$~~6.25~~12.50
700+ beds	$~~475.00~~950.00	$~~6.25~~12.50
Other Hospitals:	$~~250.00~~500.00	$~~6.25~~12.50"

SECTION 41.2(c) G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~two hundred twenty-five dollars ($225.00)~~ four hundred fifty dollars ($450.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50)."

SECTION 41.2(d) G.S. 131E-138(c) reads as rewritten:

"(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~one hundred seventy-five dollars ($175.00).~~three hundred fifty dollars ($350.00)."

SECTION 41.2(e) G.S. 131E-147(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~three hundred fifty dollars ($350.00)~~ seven hundred dollars ($700.00) plus a nonrefundable annual per-operating room fee in the amount of ~~twenty-five dollars ($25.00).~~fifty dollars ($50.00)."

SECTION 41.2(f) G.S. 131E-167(a) reads as rewritten:

"(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~one hundred twenty-five dollars ($125.00).~~two hundred fifty dollars ($250.00)."

SECTION 41.2(g) G.S. 131E-269 reads as rewritten:

"§ **131E-269. Authorization to charge fee for certification of facilities suitable to perform abortions.**

The Department of Health and Human Services shall charge each hospital or clinic certified by the Department as a facility suitable for the performance of abortions, as

authorized under G.S. 14-45.1, a nonrefundable annual certification fee in the amount of ~~three hundred fifty dollars ($350.00).~~seven hundred dollars ($700.00)."

SECTION 41.2(h) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter that have licensed beds a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
Facilities (non-ICF/MR):	6 or fewer beds	$~~125.00~~250.00	$0
	More than 6 beds	$~~175.00~~350.00	$~~6.25~~12.50
ICF/MR Only:	6 or fewer beds	$~~325.00~~650.00	$0
	More than 6 beds	$~~325.00~~650.00	$~~6.25~~12.50"

SECTION 41.2(i) G.S. 131E-138.1 reads as rewritten:

"§ **131E-138.1. Licensure fees for nursing beds and adult care home beds in continuing care retirement communities.**

The Department shall charge continuing care retirement communities licensed under Article 64 of Chapter 58 of the General Statutes that have nursing home beds or adult care home beds licensed by the Department a nonrefundable annual base license fee in the amount of ~~two hundred twenty-five dollars ($225.00)~~four hundred fifty dollars ($450.00) plus a nonrefundable annual per-bed fee in the amount of ~~six dollars and twenty-five cents ($6.25).~~twelve dollars and fifty cents ($12.50)."

SECTION 41.2(j) G.S. 131E-267 reads as rewritten:

"§ **131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed twelve thousand five hundred dollars ($12,500) for any single project:

Institutional Project	**Project Fee**
Hospitals	~~$150.00 plus $0.10/square foot of project space~~
	$300.00 plus $0.20/square foot of project space
Nursing Homes	~~$125.00 plus $0.08/square foot of project space~~
	$250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	~~$100.00 plus $0.08/square foot of project space~~
	$200.00 plus $0.16/square foot of project space
Psychiatric Hospital	~~$100.00 plus $0.08/square foot of project space~~
	$200.00 plus $0.16/square foot of project space
Adult Care Home ~~more than 7 beds~~	~~$87.00 plus $0.05/square foot of project space~~
7 or more beds	$175.00 plus $0.10/square foot of project space

Residential Project	**Project Fee**
Family Care Homes	$~~87.00~~ 175.00 flat fee
ICF/MR Group Homes	$~~137.00~~275.00 flat fee
Group Homes: 1-3 beds	$~~50.00~~ 100.00 flat fee
Group Homes: 4-6 beds	$~~87.00~~ 175.00 flat fee
Group Homes: 7-9 beds	$~~112.00~~225.00 flat fee
Other residential: More than 9 beds	$~~112.00~~225.00 plus $~~0.038/~~0.075/square foot of project space."

SECTION 41.2.(k) This section becomes effective October 1, 2005.

PART XLII. NATURAL AND ECONOMIC RESOURCES FEES

INCREASE VARIOUS AGRICULTURE FEES

SECTION 42.1.(a) G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars ($3.00)~~five dollars ($5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ~~ten dollars ($10.00)~~twelve dollars ($12.00) for each canned pet food shall accompany each request for registration."

SECTION 42.1.(b) G.S. 106-284.40(b)(4) reads as rewritten:

"(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars ($30.00)~~forty dollars ($40.00) shall be paid in lieu of the inspection fee specified above."

SECTION 42.1.(c) G.S. 106-277.28(3) reads as rewritten:

"(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of ~~two cents (2¢)~~four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown."

SECTION 42.1.(d) The Board of Agriculture shall charge no more than the following fees for agronomic services:

	Test/Service	Fee
(1)	Routine nematode samples	$ 3.00
(2)	Routine waste samples	$ 5.00
(3)	Research soil and nematode samples	$12.00
(4)	Research plant, waste, and solution samples	$12.00
(5)	Nonresident nematode samples	$14.00
(6)	Nonresident plant, waste, and solution samples	$26.00
(7)	Special services for plant, waste, and solution samples:	
	a. Heavy metals-soils	$25.00
	b. Nitrates-soils	$ 5.00
	c. Waste-heavy metals	$10.00
	d. Waste-N breakout	$10.00
	e. Waste-liming equivalent	$10.00
	f. Plant-chloride	$ 5.00
	g. Plant-molybdenum	$ 5.00
	h. Plant-petiole nitrates	$ 5.00.

SECTION 42.1.(e) The Board of Agriculture shall charge the following fees for animal disease diagnostic tests and services:

Test/Service		Fee
(1)	Histopath	$30.00
(2)	Professional services-EIA	$ 6.00
(3)	Professional services-blood pour-off fees	$ 1.00
(4)	Vacuum tube handling fee	$ 0.04

SECTION 42.1.(f) G.S. 81A-52 reads as rewritten:

"§ **81A-52. License.**

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of ~~twelve dollars ($12.00)~~nineteen dollars ($19.00) shall be paid for each person licensed at the time of the filing of the application."

SECTION 42.1.(g) G.S. 81A-72 reads as rewritten:

"§ **81A-72. Registration; certificate of registration; annual renewal.**

The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. A fee of twenty dollars ($20.00) shall accompany each application for registration and each annual registration renewal."

SECTION 42.1.(h) G.S. 81A-11 is repealed.

SECTION 42.1.(i) Chapter 81A of the General Statutes is amended by adding the following new section to read:

"**§ 81A-12. Fee schedule.**

(a) The following fees apply to all weights that are tested and certified to meet tolerances less stringent than the American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. No extra fee shall be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 5.00	0-5 kg	$ 5.00
11-100 lb	$ 10.00	6-50 kg	$ 10.00
101-1000 lb	$ 20.00	51-500 kg	$ 20.00
1001-2500 lb	$ 30.00	501-1000 kg	$ 30.00
2501-6000 lb	$ 50.00	1001-2500 kg	$ 50.00
Weight Carts up to 6000 lb	$ 125.00 (includes adjustment)		

(b) The following fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or the International Organization of Legal Metrology (IOLM) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the

normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 10.00	0-5 kg	$ 10.00
11-100 lb	$ 20.00	6-50 kg	$ 20.00
101-1000 lb	$ 40.00	51-500 kg	$ 40.00
1001-2500 lb	$ 60.00	501-1000 kg	$ 60.00
2501-6000 lb	$ 100.00	1001-2500 kg	$ 100.00

(c) The following fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or IOLM Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-20 lb	$ 20.00	0-10 kg	$ 20.00
21-50 lb	$ 40.00	11-30 kg	$ 40.00
51-1000 lb	$ 70.00	31-500 kg	$ 70.00
1001-2500 lb	$ 130.00	501-1000 kg	$ 130.00
2501-6000 lb	$ 200.00	1001-2500 kg	$ 200.00

(d) The following fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups (typically either a 1, 2, 3, 5 series or a 1, 2, 2, 5 series) and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory shall be assigned to the mass values of the weights. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 0, 1, 2, or 3 tolerances or IOLM Class E1, E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned.

Weight Range	Fee/Unit or Series
0-1 kg	$30.00 each, with a minimum charge of $90.00 (3 weights) per series
2-30 kg	$50.00 each, with a minimum charge of $150.00 (3 weights) per series
0-2 lb	$30.00 each, with a minimum charge of $90.00 (3 weights) per series
3-50 lb	$50.00 each, with a minimum charge of $150.00 (3 weights) per series

(e) The following fees apply to volumetric standard calibration.

Provers or Test Measures Tested By the Volume Transfer Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-5 gal	$30.00	0-20 liters	$30.00
Over 5 gal	Add $0.40 per each additional gallon	Over 20 liters	Add $0.10 per each additional liter

Volumetric Flasks, Graduates, Provers, Slicker Plate Standards, or Test Measures Tested By the Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point

0-100 gal set-up fee	$50.00	0-500 liters set-up fee	$50.00
Calibration Fee	Add $2.00 per gallon	Calibration Fee	Add $0.50 per liter

Small Volume Provers (SVPs) Tested By the Gravimetric Calibration Method

Customary	Fee/Test Point	Metric	Fee/Test Point
0-100 gal set-up fee	$100.00	0-500 liters set-up fee	$100.00
Calibration Fee	Add $2.00 per gallon	Calibration Fee	Add $0.50 per liter

(f) The following fees apply to tape measures and rigid rules.

Set-Up Fee	$40.00 per instrument
Calibration Fee	$10.00 per calibration interval

(g) The following fees apply to liquid-in-glass and electronic thermometers.

Set-Up Fee	$40.00 per instrument
Calibration Fee	$20.00 per calibration point
Resistance Thermometry Coefficient Calculation and Report	$100.00 per instrument

(h) Any special tests or weight cleaning shall be billed at the rate of seventy dollars ($70.00) per hour prorated to the nearest tenth of an hour, with a minimum charge of thirty-five dollars ($35.00).

(i) A minimum charge of twenty-five dollars ($25.00) per invoice shall apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

SECTION 42.1.(j) This section becomes effective September 1, 2005.

ESTABLISH FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS

SECTION 42.2.(a) G.S. 74-24.16 is amended by adding the following new subsection to read:

"(d) The Commissioner may establish fees not to exceed fifty dollars ($50.00) for each person participating in education and training programs provided by the Department of Labor to increase the number and competence of personnel engaged in the field of occupational safety and health."

SECTION 42.2.(b) This section becomes effective September 1, 2005.

PART XLIII. JUSTICE AND PUBLIC SAFETY FEES

GENERAL COURT OF JUSTICE FEE INCREASES

SECTION 43.1.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

…

(4) For support of the General Court of Justice, the sum of ~~seventy-six dollars ($76.00)~~ eighty-five dollars and fifty cents ($85.50) in the district court, including cases before a magistrate, and the sum of ~~eighty-three dollars ($83.00)~~ ninety-two dollars and fifty cents ($92.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

…

(2) For support of the General Court of Justice, the sum of ~~sixty-nine dollars ($69.00)~~ seventy-nine dollars ($79.00) in the superior court, and the sum of ~~fifty-four dollars ($54.00)~~ sixty-four dollars ($64.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~forty-three dollars ($43.00).~~ fifty-three dollars ($53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 43.1.(c) G.S. 7A-306(a)(2) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

…

(2) For support of the General Court of Justice the sum of ~~thirty dollars ($30.00).~~ forty dollars ($40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 43.1.(d) G.S. 7A-307(a)(2) and (2a) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

…

(2) For support of the General Court of Justice, the sum of ~~thirty dollars ($30.00),~~ forty dollars ($40.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed ~~three thousand dollars ($3,000).~~ six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each ~~thirty-dollar ($30.00)~~ forty-dollar ($40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed ~~three thousand dollars ($3,000),~~ six thousand dollars ($6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account."

SECTION 43.1.(e) G.S. 15A-145(e) reads as rewritten:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty-five dollars ($65.00)~~ one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 43.1.(f) G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

…

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition ~~electronically.~~electronically and to pay a fee for the device as specified in subsection (c2) of this section."

SECTION 43.1.(g) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00) plus court costs in the sum of ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

SECTION 43.1.(h) Subsection (a) of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. The remainder of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date.

DEVICE FEE FOR HOUSE ARREST WITH ELECTRONIC MONITORING

SECTION 43.2.(a) G.S. 15A-1343 is amended by adding a new subsection to read:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 43.2.(b) This section becomes effective September 1, 2005.

INCREASE BUTNER TAXES

SECTION 43.3.(a) Section 1 of Chapter 830 of the 1983 Session Laws reads as rewritten:

"Section 1. (a) The territorial jurisdiction of the Butner Police and Fire Protection District shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the

State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district.

(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect ~~beginning with fiscal year 1983-84~~ a tax of ~~twenty cents (20c)~~ twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund."

SECTION 43.3.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

FEE FOR POLICE INFORMATION NETWORK

SECTION 43.4.(a) G.S. 114-10.1 reads as rewritten:

"§ **114-10.1. Police Information Network.**

(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history.

(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit

maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For every desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is six dollars ($6.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is six dollars ($6.00) per device."

SECTION 43.4.(b) G.S. 114-10.1(d), as enacted by this section, reads as rewritten:

"(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars ($2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

(1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars ($300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For a desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the additional monthly fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device.

(2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars ($25.00) per device. For a mobile device, the fee is ~~six dollars ($6.00)~~ twelve dollars ($12.00) per device."

SECTION 43.4.(c) Subsection (b) of this section becomes effective January 1, 2006. The remainder of this section is effective when it becomes law.

PART XLIV. DEPARTMENT OF TRANSPORTATION FEE CHANGES

DOT FEE INCREASES

SECTION 44.1.(a) G.S. 20-7 reads as rewritten:

"§ **20-7. Issuance and renewal of drivers licenses.**

…

(i) Fees. – The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee For Each Year
Class A	~~$4.30~~ $4.00
Class B	~~4.30~~ 4.00
Class C	~~3.05~~ 4.00

The fee for a motorcycle endorsement is one dollar and seventy-five cents ($1.75) for each year of the period for which the endorsement is issued. The appropriate fee shall be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars ($10,000,000), and shall pay a restoration fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The ~~twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee,~~ fifty-dollar ($50.00) fee, and the first fifty dollars ($50.00) of the seventy-five-dollar ($75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of ~~the fifty-dollar ($50.00) fee~~ the seventy-five-dollar ($75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars ($10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars ($10,000,000).

…

(l) Learner's Permit. – A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder."

SECTION 44.1.(b) G.S. 20-11(j) reads as rewritten:

"(j) Duration and Fee. – A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). The fee for a full provisional license is the amount set under G.S. 20-7(i)."

SECTION 44.1.(c) G.S. 20-14 reads as rewritten:

"§ **20-14. Duplicate licenses.**

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ~~and five cents ($10.05)~~ ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.
(2) It is necessary to change the name or address on the license.
(3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.
(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired."

SECTION 44.1.(d) G.S. 20-16(e) reads as rewritten:

"(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00)."

SECTION 44.1.(e) G.S. 20-26(c) reads as rewritten:

"(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

(1) Limited extract copy of license record, for period up to three years ..... ~~$5.00~~ $8.00
(2) Complete extract copy of license record ..... ~~5.00~~ 8.00
(3) Certified true copy of complete license record ..... ~~7.00.~~ 11.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(f) G.S. 20-37.15(a1) reads as rewritten:

"(a1) The application must be accompanied by a nonrefundable application fee of ~~twenty dollars ($20.00).~~ thirty dollars ($30.00). This fee does not apply in any of the following circumstances:

(1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.
(2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c)."

SECTION 44.1.(g) G.S. 20-37.16(d) reads as rewritten:

"(d) The fee for a Class A, B, or C commercial drivers license is ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) for each year of the period for which the license is

issued. The fee for each endorsement is ~~one dollar and twenty-five cents ($1.25)~~ three dollars ($3.00) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner."

SECTION 44.1.(h) G.S. 20-42(b) reads as rewritten:

"(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is ~~five dollars ($5.00).~~ ten dollars ($10.00). The fee for an accident report is ~~four dollars ($4.00).~~ five dollars ($5.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government."

SECTION 44.1.(i) G.S. 20-50(b) reads as rewritten:

"(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is ~~three dollars ($3.00).~~ five dollars ($5.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

(1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.
(2) It expires on midnight of the day set for expiration.
(3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.
(4) If it is lost or stolen, the person who applied for it must notify the Division.
(5) It may not be issued by a dealer.
(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible."

SECTION 44.1.(j) G.S. 20-73(c) reads as rewritten:

"(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a

civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

SECTION 44.1.(k) G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title ..... ~~$35.00~~$39.00
(2) Each application for duplicate or corrected certificate of title ..... ~~10.00~~14.00
(3) Each application of repossessor for certificate of title ..... ~~10.00~~14.00
(4) Each transfer of registration ..... ~~10.00~~15.00
(5) Each set of replacement registration plates ..... ~~10.00~~15.00
(6) Each application for duplicate registration card..... ~~10.00~~15.00
(7) Each application for recording supplementary lien..... ~~10.00~~14.00
(8) Each application for removing a lien from a certificate of title ..... ~~10.00~~14.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale..... ~~10.00~~14.00
(10) Each application for a salvage certificate of title made by an insurer ..... ~~10.00~~15.00
(11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 .....25.00."

SECTION 44.1.(l) G.S. 20-85.1 reads as rewritten:

"§ **20-85.1. Registration by mail; one-day title service; fees.**

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one dollar ($1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~fifty dollars ($50.00)~~ seventy-five dollars ($75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check.

(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund."

SECTION 44.1.(m) G.S. 20-87 reads as rewritten:

"§ **20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.
(2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:
Motorcycles: 1-passenger capacity $18.00

	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	~~$41.00~~$51.00
Buses:	16 or more passengers	~~$1.40~~ $2.00 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds.....	$41.50
	5,000 pounds.....	$51.00
	6,000 pounds.....	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers ..... ~~$20.00~~ $28.00

Private passenger vehicles over fifteen passengers ..... ~~23.00~~ 31.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be ~~nine dollars ($9.00);~~ fifteen dollars ($15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be ~~sixteen dollars ($16.00).~~ twenty-two dollars ($22.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be ~~seven dollars ($7.00)~~ eleven dollars ($11.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private passengers vehicles of not more than 15 passengers."

SECTION 44.1.(n) G.S. 20-88 reads as rewritten:

"§ **20-88. Property-hauling vehicles.**

(a) Determination of Weight. – For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	Farmer Rate
Not over 4,000 pounds	~~$0.23~~$0.29
4,001 to 9,000 pounds inclusive	~~.29~~ .40
9,001 to 13,000 pounds inclusive	~~.37~~ .50
13,001 to 17,000 pounds inclusive	~~.51~~ .68
Over 17,000 pounds	~~.58~~ .77

Rates Per Hundred Pound Gross Weight	
	General Rate
Not over 4,000 pounds	~~$0.46~~$0.59
4,001 to 9,000 pounds inclusive	~~.63~~ .81
9,001 to 13,000 pounds inclusive	~~.78~~ 1.00
13,001 to 17,000 pounds inclusive	~~1.06~~ 1.36
Over 17,000 pounds	~~1.20~~ 1.54

(1) The minimum fee for a vehicle licensed under this subsection is ~~seventeen dollars and fifty cents ($17.50)~~ twenty-four dollars ($24.00) at the farmer rate and ~~twenty-one dollars and fifty cents ($21.50)~~ twenty-eight dollars ($28.00) at the general rate.

(2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.

(6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars ($75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars ($148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is ~~ten dollars ($10.00)~~ nineteen dollars ($19.00) for each year or part of a year. The fee is payable on or before January 1 of each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars ($75.00). A multiyear plate and registration card for a semitrailer or trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6.

(f) Repealed by Session Laws 1995, c. 163, s. 6.

(g) Repealed by Session Laws 1969, c. 600, s. 17.

(h) Repealed by Session Laws 1979, c. 419.

(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).

(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight.

(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word "permanent" on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section."

SECTION 44.1.(o) G.S. 20-289 reads as rewritten:

"§ **20-289. License fees.**

(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars ($50.00)~~ seventy dollars ($70.00) for each place of business.

(2) For manufacturers, ~~one hundred dollars ($100.00),~~ one hundred fifty dollars ($150.00) and for each factory branch in this State, ~~seventy dollars ($70.00).~~one hundred dollars ($100.00).

(3) For motor vehicle sales representatives, ~~ten dollars ($10.00).~~fifteen dollars ($15.00).

(4) For factory representatives, or distributor representatives, ~~ten dollars ($10.00).~~fifteen dollars ($15.00).

(5) Repealed by Session Laws 1991, c. 662, s. 4.

(b) The fees collected under this section shall be credited to the Highway Fund. These fees are in addition to all other taxes and fees."

SECTION 44.1.(p) G.S. 20-385 reads as rewritten:

"§ **20-385. Fee schedule.**

(a) Amounts. –

(1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State $ 1.00

(2) Application by an intrastate motor carrier

	for a certificate of exemption	~~25.00~~ 45.00
(3)	Certification by an interstate motor carrier that it is not regulated by the United States Department of Transportation	~~25.00~~ 45.00
(4)	Application by an interstate motor carrier for an emergency permit	~~10.00.~~18.00.

(b) Reciprocal Agreements. – The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the United States Department of Transportation if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont."

SECTION 44.1.(q) Section 5(c) of S.L. 2004-189 reads as rewritten:

"**SECTION 5.(c)** The Division of Motor Vehicles shall retain a portion of ~~the proceeds~~five cents ($0.05) collected for the issuance of each ~~of the increase in~~ drivers license and duplicate license ~~fees enacted in this Section~~ to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. ~~Proceeds remaining after deduction of amounts for development and maintenance costs~~The remainder of the five cents ($0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

SECTION 44.1.(r) G.S. 20-291, as amended by S.L. 2005-99, reads as rewritten:

"§ **20-291. Representatives to carry license and display it on request; license to name employer.**

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ~~one-half the fee set in G.S. 20-289 for an annual license.~~ ten dollars ($10.00)."

SECTION 44.1.(s) This section becomes effective October 1, 2005, and applies to fees collected on or after that date.

PART XLV. INDUSTRIAL COMMISSION FEES

INDUSTRIAL COMMISSION FEES

SECTION 45.1.(a) G.S. 97-73 reads as rewritten:

"§ **97-73. ~~Expenses of making examinations.~~Fees.**

(a) The Industrial Commission ~~shall~~ may establish by rule a schedule of fees for examinations ~~conducted and~~ conducted, reports ~~made pursuant to G.S. 97-61.1 through 97-61.6 and 97-67 through 97-71.~~ made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003."

SECTION 45.1.(b) This section is effective when it becomes law.

PART XLVI. MISCELLANEOUS PROVISIONS

EXECUTIVE BUDGET ACT APPLIES

SECTION 46.1. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 46.2.(a) The Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005, which was distributed in the House of Representatives and the Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 46.2.(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2005-2007 fiscal biennium is a line-item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The Director of the Budget submitted the itemized budget requests to the General Assembly on February 23, 2005, in the documents "North Carolina State Budget 2005-2007, Summary of Recommendations" and "State of North Carolina 2005-2007 Recommended Continuation Budget" volumes one through six. The beginning appropriation for the 2005-2006 fiscal year and the 2006-2007 fiscal year for the various departments, institutions, and other spending agencies of the State is referenced in Tables 12 and 13 of the Summary of Recommendations document as the recommended continuation budget.

The General Assembly adjusted the recommended continuation budget to incorporate all nonrecurring adjustments enacted by the 2003 General Assembly as required in S.L. 2004-124 and S.L. 2003-284. These adjustments affect the Division of Medical Assistance, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the Clean Water Management Trust Fund, the Department of Crime Control and Public Safety, the Judicial Department, the General Assembly, the Department of Revenue, the Office of State Budget and Management, the Community Colleges System Office, The University of North Carolina – Board of Governors, the Department of Transportation, the Reserve for Death Benefit Trust, and the Reserve for Disability Income Plan. These adjustments to the recommended continuation budget are set out in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005. The recommended continuation budget submitted by the Director of the Budget, as adjusted by the General Assembly, is referred to as the adjusted continuation budget and represents the starting point for further legislative revisions.

The General Assembly revised the adjusted continuation budget for the 2005-2006 fiscal year and the 2006-2007 fiscal year in accordance with the steps that

follow, and the line-item detail in the budget enacted by the General Assembly may be derived accordingly:

(1) The adjusted continuation budget was revised in accordance with reductions and additions that were set out in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005, together with any accompanying correction sheets.

(2) Transfers of funds supporting programs were made in accordance with the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005, together with any accompanying correction sheets.

SECTION 46.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

MOST TEXT APPLIES ONLY TO THE 2005-2007 FISCAL BIENNIUM

SECTION 46.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium.

EFFECT OF HEADINGS

SECTION 46.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part.

SEVERABILITY CLAUSE

SECTION 46.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 46.6. Except as otherwise provided, this act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 10:10 a.m. on the 13th day of August, 2005.

H.B. 392 **Session Law 2005-277**

AN ACT TO AMEND THE DEFINITION OF A MALT BEVERAGE UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101(9) reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than ~~six percent (6%),~~ fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage."

SECTION 2. G.S. 105-113.68(a) reads as rewritten:

"(a) Definitions. – As used in this Article, unless the context clearly requires otherwise:

(1) ~~"ABC Commission" means~~ ABC Commission. – ~~the~~ The North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.

(3) ~~"ABC permit" means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase-transportation permit. Unless the context clearly requires otherwise, "ABC permit" means a presently valid permit.~~ABC permit. – Defined in G.S. 18B-101.

(4) ~~"Alcoholic beverage" means a beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.~~Alcoholic beverage. – Defined in G.S. 18B-101.

(5) ~~"Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.~~Fortified wine. – Defined in G.S. 18B-101.

(6) ~~"License" means a~~ License. – A certificate, issued pursuant to this Article by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.

(7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.~~Malt beverage. – Defined in G.S. 18B-101.

(8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~Person. – Defined in G.S. 105-228.90.

(9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or by any means, for consideration.~~Sale. – Defined in G.S. 18B-101.

(10) ~~"Secretary" means the~~ Secretary. – The Secretary of Revenue.

(11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.~~Spirituous liquor or liquor. – Defined in G.S. 18B-101.

(12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries,~~

~~rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and produced in accordance with the regulations of the United States.~~Unfortified wine. – Defined in G.S. 18B-101.

(13) ~~"Wholesaler or importer" when~~ Wholesaler or importer. – When used with reference to wholesalers or importers of wine or malt beverages includes resident wineries that sell their wines at retail and resident breweries that produce fewer than 310,000 gallons of malt beverages per year.

(14) ~~"Wine" means unfortified~~ Wine. – Unfortified and fortified wine.

(15) ~~"Wine shipper permittee" means a~~ Wine shipper permittee. – A winery that holds a wine shipper permit issued by the ABC Commission under G.S. 18B-1001.1."

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

In the General Assembly read three times and ratified this the 4th day of August, 2005.

Became law upon approval of the Governor at 10:31 a.m. on the 13th day of August, 2005.

H.B. 464 **Session Law 2005-278**

AN ACT TO PERMIT THE CITY OF WINSTON-SALEM TO LEVY A MOTOR VEHICLE PRIVILEGE TAX OF UP TO TWENTY DOLLARS FOR EACH RESIDENT VEHICLE LOCATED IN THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Winston-Salem only.

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

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ fifteen dollars ($15.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. The proceeds of these taxes derived from any levy above ten dollars ($10.00) and up to fifteen dollars ($15.00) shall be used exclusively for transportation-related purposes as follows:

(1) One-third shall be used for traffic management functions, including, but not limited to, congestion management, congestion prevention, and traffic calming; and

(2) One-third shall be used for public transit functions, including, but not limited to, bus, streetcar, and rail transit systems; and

(3) One-third shall be used for nonmotorized transportation functions, including, but not limited to, sidewalks, pedestrian safety improvements, bicycle routes, and greenways."

SECTION 3. G.S. 20-97(b), as amended by Section 2 of this act, reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose. The proceeds of these taxes derived from any levy above ten dollars ($10.00)

and up to ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be used exclusively for transportation-related purposes as follows:

(1) One-third shall be used for traffic management functions, including, but not limited to, congestion management, congestion prevention, and traffic calming; and

(2) One-third shall be used for public transit functions, including, but not limited to, bus, streetcar, and rail transit systems; and

(3) One-third shall be used for nonmotorized transportation functions, including, but not limited to, sidewalks, pedestrian safety improvements, bicycle routes, and greenways."

SECTION 4. Chapter 56 of the 1993 Session Laws is repealed effective upon the date the City of Winston-Salem acts to levy an additional tax under this act.

SECTION 5. Section 3 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law on the date it was ratified.

H.B. 612 **Session Law 2005-279**

AN ACT TO AUTHORIZE THE TOWN OF TROUTMAN TO PARTICIPATE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM WITHOUT PROVIDING PRIOR SERVICE CREDITS TO ITS EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, if the Town of Troutman becomes a member of the Local Governmental Employees' Retirement System, the town council may elect to provide no prior service credit in the Retirement System for employees employed prior to the date that the town becomes a participating employer in the Retirement System, and no prior service credit will be given for employees of the town for service provided to the town prior to its participation in the Retirement System, nor shall the town be required to pay for any prior service credits for its employees.

SECTION 2. This act applies only to the Town of Troutman.

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law on the date it was ratified.

S.B. 669 **Session Law 2005-280**

AN ACT TO REPEAL LEGISLATION THAT MADE STATE LAND SUBJECT TO MUNICIPAL PLANNING JURISDICTION AND PERMITTED THE IMPOSITION OF OVERLAY AND SPECIAL USE DISTRICTS ON STATE LAND WITHOUT THE APPROVAL OF THE COUNCIL OF STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 41(e) of S.L. 2004-199 is repealed.

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

In the General Assembly read three times and ratified this the 9th day of August, 2005.

Became law upon approval of the Governor at 7:28 p.m. on the 18th day of August, 2005.

S.B. 32 **Session Law 2005-281**

AN ACT TO ALLOW COUNTIES IN CERTAIN DEFINED CIRCUMSTANCES TO REMOVE TERRITORY FROM AN EXISTING FIRE PROTECTION TAX DISTRICT AND ESTABLISH A NEW DISTRICT FOR SUCH PROPERTY WITH AN AD VALOREM TAX CEILING AND TO PROVIDE THAT MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND MAY ELECT TO TERMINATE MEMBERSHIP IN THE FUND AT ANYTIME, BUT THAT DELINQUENT PAYMENTS ALONE DO NOT TERMINATE MEMBERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-309.3. Rate limitation in certain districts.**

(a) Any area in a service district for fire protection established pursuant to G.S. 153A-301(a)(2) may be removed from that district by resolution of the county board of commissioners and a new service district simultaneously created for the area so removed if the area is an industrial facility (and appurtenant land and structures):

(1) Subject to a contract not to annex by a municipality under which the owner of the industrial property is obligated to make payments in lieu of taxes equal to or in excess of fifty percent (50%) of the taxes such industry would pay if it were annexed and is current in making such payments.

(2) Actively served by an industrial fire brigade which meets the standards of the National Fire Protection Association and the requirements of the North Carolina Occupational Safety and Health Standards for General Industry (Title 29 Code of Federal Regulations Part 1910 incorporated by reference in 13 NCAC 07F .0101) for industrial fire brigades.

(b) Prior to removing such area from the service district and simultaneously creating a new district of that same area, the board shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be removed and a new district created. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(c) In any district created under this section from area removed from an existing district, the county may not levy or collect property taxes for the purpose of financing fire protection pursuant to this Article in excess of a rate of three and one-half cents (3.5¢) on each one hundred dollars ($100.00) of property valuation subject to taxation.

(d) If any district established under this section ceases to meet the tests established by subdivisions (a)(1) and (a)(2) of this section, the board of commissioners may by resolution abolish that district and annex that territory to the district from which it was removed after a public hearing under the same provisions as set out in subsection (b) of this section.

(e) Any resolutions adopted under this section become effective the first day of July following their adoption."

SECTION 1.1. G.S. 58-86-85 is repealed.

SECTION 1.2. G.S. 58-86-35 reads as rewritten:

"§ **58-86-35. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of ~~members.~~members; termination of membership.**

Those firemen who are eligible pursuant to G.S. 58-86-25 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of ten dollars ($10.00) per month. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at anytime and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member."

SECTION 1.3. G.S. 58-86-40 reads as rewritten:

"§ **58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of ~~members.~~members; termination of membership.**

Those rescue squad workers eligible pursuant to G.S. 58-86-30 may apply to the board for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of ten dollars ($10.00) per month. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at anytime and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member."

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

In the General Assembly read three times and ratified this the 8th day of August, 2005.

Became law upon approval of the Governor at 7:29 p.m. on the 18th day of August, 2005.

S.B. 189 Session Law 2005-282

AN ACT TO PROHIBIT THE OPERATION OF ALL-TERRAIN VEHICLES BY PERSONS LESS THAN EIGHT YEARS OLD, TO RESTRICT THE OPERATION OF ALL-TERRAIN VEHICLES BY PERSONS EIGHT TO FIFTEEN YEARS OLD BASED ON ENGINE CAPACITY, TO PROHIBIT SELLERS FROM KNOWINGLY SELLING ALL-TERRAIN VEHICLES FOR USE BY PERSONS

LESS THAN EIGHT YEARS OLD OR FOR USE BY PERSONS EIGHT TO FIFTEEN YEARS OLD IN VIOLATION OF THE ENGINE CAPACITY LIMITATIONS, TO REQUIRE SAFETY TRAINING FOR ATV OPERATORS, AND TO CREATE INFRACTIONS FOR VIOLATIONS.

The General Assembly of North Carolina enacts:

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

"§ **20-4.01. Definitions.**

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

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation.

…."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"§ **20-171.10. Age restrictions.**

(a) It is unlawful for any parent or legal guardian of a person less than eight years of age to knowingly permit that person to operate an all-terrain vehicle.

(b) It is unlawful for any parent or legal guardian of a person less than 12 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity of 70 cubic centimeter displacement or greater.

(c) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity greater than 90 cubic centimeter displacement.

(d) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle unless the person is under the continuous visual supervision of a person 18 years of age or older while operating the all-terrain vehicle.

(e) Subsections (b) and (c) of this section do not apply to any parent or legal guardian of a person born on or before August 15, 1997, who permits that person to operate an all-terrain vehicle and who establishes proof that the parent or legal guardian owned the all-terrain vehicle prior to August 15, 2005.

"§ **20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of eight years.

(2) With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age.

(3) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

(g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at anytime when visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws.

"**§ 20-171.15. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

"**§ 20-171.16. Penalties.**

Any person violating any of the provisions of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00).

"**§ 20-171.17. Exceptions.**

(a) The provisions of this Part do not apply to any owner, operator, lessor, or renter of a farm or ranch, or that person's employees or immediate family or household members, when operating an all-terrain vehicle while engaged in farming operations.

(b) The provisions of this Part do not apply to any person using an all-terrain vehicle for hunting or trapping purposes if the person is otherwise lawfully engaged in those activities."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of August, 2005.

Became law upon approval of the Governor at 7:31 p.m. on the 18th day of August, 2005.

S.B. 687 **Session Law 2005-283**

AN ACT TO AMEND THE LAW GOVERNING THE VOLUNTEER RESCUE/EMS FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-87-5 reads as rewritten:

"§ **58-87-5. Volunteer Rescue/EMS Fund.**

(a) There is created in the Department of Insurance the Volunteer Rescue/EMS Fund to provide grants to volunteer rescue units providing rescue or rescue and emergency medical services to purchase equipment and make capital improvements. An eligible rescue or rescue/EMS unit may apply to the Department of Insurance for a grant under this section. The application form and criteria for grants shall be established by the Department. The North Carolina Association of Rescue and Emergency Medical Services, Inc., shall provide the Department with an advisory priority listing for rescue equipment eligible for funding, and the ~~The~~ Department of Health and Human Services shall provide the Department with an advisory priority listing of EMS equipment eligible for funding. The State Treasurer shall invest the Fund's assets according to law, and the earnings shall remain in the Fund. On December 15 of each year, the Department shall make grants to eligible rescue or rescue/EMS units subject to all of the following limitations:

(1) A grant to an applicant who is required to match the grant with non-State funds may not exceed ~~fifteen thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), and a grant to an applicant who is not required to match the grant with non-State funds may not exceed three thousand dollars ($3,000).

(2) An applicant whose liquid assets, when combined with the liquid assets of any corporate affiliate or subsidiary of the applicant, are more than one thousand dollars ($1,000) shall match the grant on a dollar-for-dollar basis with non-State funds.

(3) The grant may be used only for equipment ~~purchases, payment of highway use taxes on those purchases,~~purchases or capital expenditures.

(4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Department shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the

Fund may be used for additional staff and resources to administer the Fund in each fiscal year. In addition, notwithstanding G.S. 58-78-20, up to four percent (4%) of the Fund may be used for additional staff and resources for the North Carolina Fire and Rescue Commission.

(b) A ~~rescue~~ rescue, emergency medical services, or rescue/EMS unit is eligible for a grant under this section if it meets all of the following conditions:

(1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a).

(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of ~~three~~ 10 full-time paid positions.

(3) It has been recognized by the Department as an organization that provides ~~rescue~~ rescue, emergency medical services, or rescue and emergency medical services. A unit that provides emergency medical services only is eligible for grant funding only after all those eligible rescue or rescue and emergency medical services units that are approved have been funded each grant year. A unit that only provides emergency medical services may be funded up to the level of emergency medical services that the unit is approved to provide by the authority having jurisdiction.

(4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section.

(c) For the purpose of this section and Article 88 of this Chapter, "rescue" means the removal of individuals facing external, nonmedical, and nonpatient related peril to areas of relative safety. A "rescue unit" or "rescue squad" means a group of individuals who are not necessarily trained in emergency medical services, fire fighting, or law enforcement, but who expose themselves to an external, nonmedical, and nonpatient related peril to effect the removal of individuals facing the same type of peril to areas of relative safety. The unit or squad must comply with existing State statutes and with eligibility criteria established by the North Carolina Association of Rescue and Emergency Medical Services, Inc."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 9th day of August, 2005.

Became law upon approval of the Governor at 7:35 p.m. on the 18th day of August, 2005.

S.B. 644 **Session Law 2005-284**

AN ACT EXEMPTING THE EMPLOYEES OF THE STATE BANKING COMMISSION FROM COVERAGE UNDER CERTAIN CLASSIFICATION AND COMPENSATION RELATED PROVISIONS OF THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 53 of the General Statutes is amended by adding the following section to read:

"§ **53-96.1. Salaries, promotions, and leave of employees of the Office of the Commissioner of Banks.**

(a) The Office of the Commissioner of Banks and its employees are exempt from the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.

(b) The exemptions authorized by this section shall be used to develop organizational classification and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Commissioner of Banks in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemptions, including (i) a system of job categories or descriptions tailored to the agency's needs; (ii) policies regarding paid time off for agency personnel and the voluntary sharing of such time off; and (iii) a system of uniform performance assessments for agency personnel tailored to the agency's needs. The Commissioner of Banks may, under the supervision of the Office of State Personnel, develop and implement organizational classification and compensation innovations having the potential to benefit all State agencies."

SECTION 2. G.S. 53-101 reads as rewritten:

"§ **53-101. Clerical help.**

The Commissioner of Banks is empowered to employ sufficient clerical and secretarial help, and other necessary labor to conduct the affairs of ~~his~~ the Commissioner's office ~~with economy and efficiency.~~ efficiently and effectively. ~~Persons so employed shall be paid as other employees in the departments of the State and shall be under the same rules and regulations.~~"

SECTION 3. By April 1, 2007, the Commissioner of Banks and the Office of State Personnel shall report jointly to the General Assembly on the results of these efforts in meeting the agency's personnel needs and enhancing the efficiency and effectiveness of its operations.

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

In the General Assembly read three times and ratified this the 10th day of August, 2005.

Became law upon approval of the Governor at 7:40 p.m. on the 18th day of August, 2005.

H.B. 1012 **Session Law 2005-285**

AN ACT TO ALLOW MEMBERS OF STATE-RECOGNIZED INDIAN TRIBES TO HUNT, TRAP, OR FISH ON TRIBAL LANDS WITHOUT OBTAINING A LICENSE ISSUED BY THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-276 is amended by adding a new subsection to read:

"(l1) The licensing provisions of this Article do not apply to a member of an Indian tribe recognized under Chapter 71A of the General Statutes for purposes of hunting, trapping, or fishing on tribal land. A person taking advantage of this exemption shall possess and produce proper identification confirming the person's membership in a

State-recognized tribe upon request by a wildlife enforcement officer. For purposes of this section, "tribal land" means only real property owned by an Indian tribe recognized under Chapter 71A of the General Statutes."

SECTION 2. The Commission of Indian Affairs shall provide the Wildlife Resources Commission with a list of properties owned by State-recognized tribes in this State and update that list whenever additional land is acquired by a tribe. Each tribe shall post tribal land to give notice of its ownership by the tribe.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 1:45 p.m. on the 22nd day of August, 2005.

H.B. 1469 **Session Law 2005-286**

AN ACT GRANTING PUBLIC UTILITIES AND CABLE TELEVISION SYSTEMS IMMEDIATE ACCESS TO CERTAIN PUBLIC RIGHTS-OF-WAY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 62 of the General Statutes is amended by adding the following new section to read:

"**§ 62-182.1. Access to dedicated public right-of-way.**

When any map or plat of a subdivision, recorded as provided in G.S. 47-30 and G.S. 136-102.6, reflects the dedication of a public street or other public right-of-way, the dedicated public street or public right-of-way shall, upon recordation of the map or plat, become immediately available for use by any public utility or cable television system to install, maintain, and operate lines, cables, or facilities for the provision of service to the public. No public utility or cable television system shall place or erect any line, cable, or facility in, over, or upon a street or right-of-way in a subdivision that is intended to become a public street or public right-of-way, until a map or plat of the subdivision has been recorded as provided in G.S. 47-30 and G.S. 136-102.6, and except in accordance with procedures established by the Department of Transportation, Division of Highways, for accommodating utilities or cable television systems on highway rights-of-way. Upon recordation of a map or plat of a subdivision as provided in G.S. 47-30 and G.S. 136-102.6, no liability shall attach to the developer of the property as a result of any activity of a public utility or cable television system occurring in the dedicated public street or public right-of-way. Nothing in this section shall relieve the developer of the property of responsibilities under G.S. 136-102.6."

SECTION 2. This act is effective when it becomes law with respect to maps and plats recorded after the effective date.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 1:55 p.m. on the 22nd day of August, 2005.

H.B. 1016 **Session Law 2005-287**

AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW ENFORCEMENT PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-11.1(b1) reads as rewritten:

"(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency

shall maintain a record and inventory of all firearms received pursuant to this subdivision.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance."

SECTION 2. Article 2 of Chapter 15 of the General Statutes is amended by adding a new section to read:

"**§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial evidence.**

(a) Definition. – For purposes of this section, the term "unclaimed firearm" means a firearm that is found or received by a law enforcement agency and that remains unclaimed by the person who may be entitled to it for a period of 30 days after the publication of the notice required by subsection (b) of this section. The term does not include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

(b) Published Notice of Unclaimed Firearm. – When a law enforcement agency finds or receives a firearm and the firearm remains unclaimed for a period of 180 days, the agency shall publish at least one notice in a newspaper published in the county in which the agency is located. The notice shall include all of the following:

(1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.

(2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.

(3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

(c) If the firearm remains unclaimed for a period of 30 days after the publication of the notice, then the person who found the firearm and turned it over to the law enforcement agency may claim the firearm provided the person satisfies the custodial law enforcement agency holding the firearm that the person is qualified under State and federal law to possess the firearm and also presents a pistol permit issued in accordance with Article 52A of Chapter 14 of the General Statutes.

(d) If the firearm remains unclaimed for a period of 30 days after the publication of the notice and the person who found the firearm does not claim it as provided by subsection (c) of this section, then the head or chief of the law enforcement agency may apply to the appropriate district court for an order of disposition of the unclaimed firearm. The application shall be written.

(e) Disposition of Firearm. – The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the law enforcement agency applying for the order of disposition is located or by the sheriff's duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

(2) By ordering the firearm turned over to the law enforcement agency applying for the disposition of the firearm for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm

pursuant to this subsection only if the firearm has a legible, unique identification number.

(f) Disbursement of Proceeds of Sale. – If the law enforcement agency sells the firearm, then the proceeds of the sale shall be retained by the law enforcement agency and used for law enforcement purposes. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this section."

SECTION 3. G.S. 14-269.1 reads as rewritten:

"§ **14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

~~(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.~~

(4b) By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice

Academy shall maintain a record and inventory of all such weapons received."

SECTION 4. G.S. 50B-3.1(h) reads as rewritten:

"(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), ~~(4a),~~(4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:00 p.m. on the 22nd day of August, 2005.

H.B. 926 **Session Law 2005-288**

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONCEAL THE DEATH OF A PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ **14-401.22. Concealment of death.**

(a) Any person who, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body is guilty of a Class I felony.

(b) Any person who aids, counsels, or abets any other person in concealing the death of a person is guilty of a Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:01 p.m. on the 22nd day of August, 2005.

H.B. 736 **Session Law 2005-289**

AN ACT TO ALLOW THE ADMINISTERING OF THE CODE ENFORCEMENT OFFICIAL BOARD'S EXAMINATION AT REGIONAL LOCATIONS AND MORE FREQUENTLY THAN QUARTERLY BY THE AUTHORIZING OF CODE ENFORCEMENT OFFICIAL EXAMINATION FEES, BY REPEALING THE SUNSET ON PROVISIONS RELATING TO TRAVEL DISTANCE BETWEEN PUBLIC USE TOILETS IN MALLS, AND BY CLARIFYING THAT CERTAIN ELECTRIC GENERATING FACILITIES ARE NOT PLUMBING, HEATING, OR FIRE SPRINKLER CONTRACTORS.

The General Assembly of North Carolina enacts:

PART I. CODE ENFORCEMENT EXAMINATION FEES.

SECTION 1. G.S. 143-151.16 reads as rewritten:

"§ **143-151.16. Certification fees; renewal of ~~certificates.~~ certificates; examination fees.**

(a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars ($20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra two dollar ($2.00) late renewal fee for renewals made after the first day of July each year.

(c) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate.

(d) The Board may establish and collect a fee to be paid by each applicant for examination in an amount not to exceed one hundred twenty-five dollars ($125.00). In addition, the Board may establish and collect a fee to be paid by each applicant applying for a review of the applicant's examination. The amount of the examination review fee shall not exceed fifty dollars ($50.00). Examination and examination review fees may be paid directly to approved testing services that maintain regional facilities for the purpose of administering the Board's examinations."

PART II. PUBLIC USE TOILETS IN COVERED MALL BUILDINGS.

SECTION 2. Section 37 of S.L. 2004-199 reads as rewritten:

"**SECTION 37.(a)** Article 9 of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"§ **143 143.5. Access to toilets in shopping malls.**

Notwithstanding any other law or rule, a horizontal travel distance of 300 feet for access to public use toilets in covered mall buildings shall be allowed.

SECTION 37.(b) This section is effective when it becomes ~~law and applies to covered mall buildings for which building permits are issued on or before December 1, 2005. This section expires December 1, 2005.~~ law."

PART III. ELECTRIC GENERATING FACILITIES EXEMPTION.

SECTION 3. G.S. 87-21 is amended by adding the following subsection to read:

"(c2) Exemption. – The provisions of this Article shall not apply to electric generating facilities that are subject to G.S. 62-110.1 or that provide power sold at wholesale that is regulated by the Federal Energy Regulatory Commission."

SECTION 4. Part I of this act becomes effective October 1, 2005, and applies to applications made on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:51 p.m. on the 22nd day of August, 2005.

H.B. 819 **Session Law 2005-290**

AN ACT ALLOWING REGIONAL COUNCILS OF GOVERNMENT TO ACQUIRE REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-475 reads as rewritten:

"§ **160A-475. Specific powers of council.**

The charter may confer on the regional council any of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic ~~agency;~~ agency.

(2) To employ ~~personnel;~~ personnel.

(3) To contract with ~~consultants;~~ consultants.

(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for ~~services;~~ services.

(5) To study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional ~~development;~~ development.

(6) To promote cooperative arrangements and coordinated action among its member ~~governments;~~ governments.

(7) To make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are ~~located;~~ located.

(7a) For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. A regional council may not exercise the power of eminent domain.

(8) Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby, provided, that no

regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except for the purposes permitted under subdivision (7a) of this section or in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:52 p.m. on the 22nd day of August, 2005.

H.B. 1243 **Session Law 2005-291**

AN ACT REQUIRING A LONGER NOTICE PERIOD FOR A TERMINATION OF A TENANCY FOR THE RENTAL SPACE FOR RESIDENTIAL MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-14 reads as rewritten:

"§ **42-14. Notice to quit in certain tenancies.**

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least ~~30~~ 60 days before the end of the current rental period, regardless of the term of the tenancy."

SECTION 2. This act becomes effective January 1, 2006, and applies to all notices to quit given on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:53 p.m. on the 22nd day of August, 2005.

H.B. 1240 **Session Law 2005-292**

AN ACT TO AMEND THE VACATION RENTAL HOME ACT CONCERNING VACATION RENTAL AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42A-17(b) reads as rewritten:

"(b) Except as ~~otherwise~~ provided in ~~this subsection,~~ G.S. 42A-36, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant."

SECTION 2. G.S. 42A-19(a) reads as rewritten:

"(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take ~~his or~~

~~her~~ title to the property subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor ~~such~~ those terms, but the tenant shall be entitled to a refund of payments made by him or her, as provided in subsection (b) of this section.

Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after ~~entering into the contract of sale~~ transfer of the property, the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. In lieu of providing the grantee a copy of each vacation rental agreement, where the landlord or the landlord's agent utilizes a standard form vacation rental agreement, the landlord may provide the grantee with a copy of the part of each vacation rental agreement that contains information unique to the tenancy, the amount to be paid by the tenant, and the parties' signatures, along with one copy of the rest of the standard form vacation rental agreement. However, the landlord shall not be required to provide the grantee with copies of the vacation rental agreements if in anticipation of acquiring the property the grantee has engaged the landlord's rental agent to continue to manage the property after the transfer and the landlord authorizes the rental agent to provide the information to the grantee and the grantee approves. Not later than ~~10~~ 20 days after transfer of the property, the grantee or the grantee's agent shall:

(1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

(2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.

(3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

Notwithstanding any other provision of this section, if the grantee engages as the grantee's broker and rental agent for the property the broker who procured the tenant's vacation rental agreement for the landlord, the grantee shall have no obligation under subdivisions (1), (2), and (3) of this subsection with regard to those tenants whose vacation rental agreements must be honored under this section or with regard to those tenants whose vacation rental agreements the grantee has agreed in writing to honor."

SECTION 3. G.S. 42A-36 reads as rewritten:

"§ **42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant ~~in possession of the property~~ under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the prorated rent for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated ~~him or her~~the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased

insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total rent charged for the vacation rental to the tenant."

SECTION 4. This act becomes effective October 1, 2005, and applies to vacation rental agreements entered into on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:55 p.m. on the 22nd day of August, 2005.

H.B. 705 **Session Law 2005-293**

AN ACT TO ALLOW BUYOUT PAYMENTS TO COUNT TOWARDS THE ONE THOUSAND DOLLAR GROSS INCOME REQUIREMENT FOR AGRICULTURAL LAND FOR PRESENT-USE VALUE TAX EXEMPTIONS.

The General Assembly of North Carolina enacts:

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

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

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the ~~land and~~ land, any payments received under a governmental soil conservation or land retirement ~~program.~~ program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:57 p.m. on the 22nd day of August, 2005.

H.B. 1779 **Session Law 2005-294**

AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-330 is amended by adding two new subdivisions to read:

"(4) Collecting authority. The Division of Motor Vehicles or an agent contracting with the Division of Motor Vehicles.

(5) Municipal corporation. Defined in G.S. 105-273(11)."

SECTION 2. G.S. 105-330.2 reads as rewritten:

"§ **105-330.2. Appraisal, ownership, and situs.**

(a) Date Determined. – The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined as of January 1 of the year the taxes are due. If the value of a new motor vehicle cannot be determined as of that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.

The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) Value; Appeal. – A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The Property Tax Division of the Department of Revenue shall annually adopt a schedule of values, standards, and rules to be used in the valuation of motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor ~~within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5.~~before the taxes become delinquent pursuant to G.S. 105-330.4. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) Administration. – The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement

the tax listing and collection provisions of this Article. The memorandum of understanding shall also include a procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles."

SECTION 3. G.S. 105-330.4(a) reads as rewritten:

"(a) Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) ~~shall be~~are due on September 1 following the date by which the vehicle was required to be listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) ~~shall be~~are due each year on the ~~following dates:~~

~~(1) For a vehicle registered under the staggered system, taxes shall be due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.~~date a new registration is applied for or the fifteenth day of the month following the month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).

~~(2) For a vehicle newly registered under the annual system, taxes shall be due on the first day of the fourth month following the date the new registration is applied for. For a vehicle whose registration is renewed under the annual system, taxes shall be due on May 1 following the date the registration expired.~~"

SECTION 4. G.S. 105-330.4(b) reads as rewritten:

"(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of ~~two percent (2%)~~ five percent (5%) for the first month following the date the taxes were due and three-fourths percent (3/4 %) for each month thereafter until the taxes are paid, unless the ~~tax~~ notice required by G.S. 105-330.5 is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c)."

SECTION 5. G.S. 105-330.4(b), as amended by Section 4 of this act, reads as rewritten:

"(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes and registration fees on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of five percent (5%) for the ~~first month~~remainder of the month following the ~~date~~ month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).~~the taxes were due and~~ Interest accrues at the rate of three-fourths percent (3/4 %) for each month thereafter until the taxes and fees are paid, unless the notice required by G.S. 105-330.5 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c)."

SECTION 6. G.S. 105-330.5 reads as rewritten:

"§ **105-330.5. Listing and collecting procedures.**

(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the

~~assessor~~ Property Tax Division of the Department of Revenue shall prepare a combined tax and registration notice for each ~~vehicle; the~~vehicle. The combined tax and registration notice shall contain all ~~county, municipal, and special district~~county and municipal corporation taxes and fees due on the motor ~~vehicle.~~vehicle as computed by the assessor in the county of registration. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration ~~expired~~ expires or the new registration ~~was~~ is applied for. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The combined tax and registration notice shall contain:

(1) The date of the combined tax and registration notice.

(2) The appraised value of the motor vehicle.

(3) The tax rate of the taxing units.

(4) A statement that the appraised value of the motor vehicle may be appealed to the assessor ~~within 30 days after the date of the notice.~~before the taxes and fees become delinquent.

(5) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.

(a1) When a new registration is obtained for a vehicle registered under the annual system in a month other than December, the ~~assessor~~ taxes shall ~~prorate the taxes due~~be prorated for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection (a). The numerator of the proration fraction is the number of full months remaining in the calendar year following the date the registration is applied for and the denominator of the fraction is 12.

(b) When the combined tax and registration notice required by subsection (a) is prepared, the ~~county tax collector~~Property Tax Division of the Department of Revenue or a third-party contractor shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The Department shall establish a fee equal to the actual cost of printing and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and ~~The county~~ may retain ~~the actual cost of~~a fee for collecting ~~municipal and special district taxes~~these taxes and fees. ~~collected pursuant to this Article,~~ The fee retained by the collecting authority ~~not to exceed one and one-half percent (1 1/2%) of the amount of taxes collected.~~shall be an amount equal to at least one-third of the compensation paid for registration renewals conducted by contract agents under G.S. 20-63(h). The ~~county finance officer~~Property Tax Division shall establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted ~~to the units to which they are due~~ at least once each month. Each ~~month, a county~~collecting authority shall provide a weekly financial report containing ~~reasonable~~ information required by the Property Tax Division to the ~~municipalities and special districts located in it~~taxing units and Division of Motor Vehicles to enable them to account for ~~the tax~~ payments ~~remitted to them.~~received.

(b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities shall list, assess, and tax classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) as provided in G.S. 105-326, 105-327, and 105-328 and shall send tax notices as provided in this section.

(d) The county shall include taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) in the tax levy for the fiscal year in which the taxes become due and shall charge the taxes to the tax collector for that year, unless the tax notice required by subsection (a) is prepared after the date the taxes are due. If that occurs, the county shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year."

SECTION 7. G.S. 105-330.7 is repealed.

SECTION 8. Article 22A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-330.10. Disposition of interest.**

Sixty percent (60%) of the interest collected on unpaid taxes pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account created within the Treasurer's Office. The North Carolina Association of County Commissioners shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semiannually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account."

SECTION 9. G.S. 105-330.10, as enacted by Section 8 of this act, reads as rewritten:

"§ **105-330.10. Disposition of interest.**

~~Sixty percent (60%) of the~~ The interest collected on unpaid ~~taxes~~ registration fees pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the ~~Combined Motor Vehicle and Registration Account created within the Treasurer's Office.~~North Carolina Highway Fund for technology improvements within the Division of Motor Vehicles. ~~The funds in this account shall be used to develop and implement an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semi-annually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account.~~"

SECTION 10. G.S. 20-50.3 is repealed.

SECTION 11. G.S. 20-50.4 reads as rewritten:

"§ **20-50.4. Division to refuse to register vehicles on which county and municipal taxes and fees are ~~delinquent~~ not paid and when there is a failure to meet court-ordered child support obligations.**

(a) ~~Delinquent~~ Property Taxes Paid with Registration.~~Property Taxes.~~ – ~~Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7, the~~The Division shall refuse to register ~~for the owner named in the list any vehicle identified in the list until either the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused or the county certifies to the Division that the tax has been paid. The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred or the county certifies to the Division that the tax has been paid. The certification must be in the form and contain the information required by the Division.~~a vehicle on which county and municipal taxes and fees have not been paid.

(b) Delinquent Child Support Obligations. – Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent."

SECTION 12. The Property Tax Division within the Department of Revenue and the Division of Motor Vehicles within the Department of Transportation shall jointly study and develop a plan for determining the method of valuation of motor vehicles to be taxed and for implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the State. The Divisions shall consult with representatives from the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Association of Assessing Officers, the North Carolina Automobile Dealers Association, the North Carolina Independent Automobile Dealers Association, and the North Carolina Tax Collectors Association. The Divisions shall submit a report of its findings and recommendations to the Revenue Laws Study Committee, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division by April 30, 2006.

SECTION 13. Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 9, 10, and 11 of this act become effective July 1, 2009, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:57 p.m. on the 22nd day of August, 2005.

H.B. 1436 **Session Law 2005-295**

AN ACT TO DIRECT THE SENTENCING COMMISSION TO STUDY AND MAKE RECOMMENDATIONS REGARDING EVIDENCE THAT A MURDER WAS

COMMITTED IN VIOLATION OF A VALID DOMESTIC VIOLENCE PROTECTIVE ORDER AS AN AGGRAVATING FACTOR IN CAPITAL SENTENCING.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study aggravating factors which may be considered in capital felony sentencing pursuant to G.S. 15A-2000(e). In particular, the Commission shall examine the question of whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe. The Commission shall report its findings and recommendations to the 2005 General Assembly not later than May 1, 2006. The report shall describe the Commission's deliberations and shall include any policy recommendations and proposed legislation.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:58 p.m. on the 22nd day of August, 2005.

H.B. 810 **Session Law 2005-296**

AN ACT AMENDING CERTAIN LICENSURE AND CERTIFICATION REQUIREMENTS UNDER THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89C-13(b) reads as rewritten:

"(b) Land Surveyor Applicant. – To be eligible for admission to examination for land surveyor intern or professional land surveyor, an applicant must be of good character and reputation and shall submit five references with the application for licensure as a land surveyor, two of which references shall be professional land surveyors having personal knowledge of the applicant's land surveying experience, or in the case of an application for certification as a land surveyor intern by three references, one of which shall be a licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land surveyor or for certification as a land surveyor intern respectively:

(1) As a professional land surveyor (shall meet one):

a. Rightful possession of a bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of two years or more of progressive practical experience, one year of which shall have been under a practicing professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. ~~The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the bachelor of science degree at the first regularly scheduled examination thereafter.~~ Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of four years of progressive practical experience, three years of which shall have been under a practicing licensed land ~~surveyor,~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. ~~The~~ If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination ~~(Surveying Fundamentals) immediately~~ after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully

completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

c. Repealed by Session Laws 1998-118, s. 11.

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing licensed land ~~surveyor,~~surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, 16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. ~~The~~ If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination ~~(Surveying Fundamentals)~~ upon graduation from high school or the completion of a high school equivalency certificate and successfully completing ~~five~~ 10 years of progressive practice experience, ~~four~~ six of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, the applicant may be asked to take any examinations as the Board requires to determine the applicant's qualifications, but in any event, the applicant shall be required to pass an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the principles and practice of land surveying examination and the fundamentals of land surveying examination. Upon satisfactorily passing the examinations, the applicant shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. – Any person presently licensed to practice professional engineering under this Chapter shall upon application be licensed to practice land surveying, providing a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. – Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the ~~Board~~ Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing a written and oral examination as required by the Board.

~~b. Rightful possession of a bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing any oral and written examinations required by the Board.~~

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ 10 years of progressive, practical experience, ~~four~~ six years of which shall have been under a practicing licensed land surveyor and satisfactorily passing any oral and written examinations required by the Board.

d. Graduation and examination. – A graduate of a surveying curriculum or other equivalent curriculum in surveying approved by the Board or a student who has attained senior status in an accredited surveying program of four years or more shall be admitted to the fundamentals of surveying examination. The applicant shall be notified if the examination was passed or not passed, and if passed the applicant shall be certified as a surveying intern if the applicant is otherwise qualified.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 2:59 p.m. on the 22nd day of August, 2005.

H.B. 803 **Session Law 2005-297**

AN ACT TO AUTHORIZE THE MANUFACTURED HOUSING BOARD TO CHARGE AND COLLECT A LATE FILING FEE FOR LICENSEES THAT APPLY FOR RENEWAL OF THE LICENSE AFTER THE LICENSE HAS EXPIRED AND TO ELIMINATE SUPPLEMENTAL LICENSING BY THE MANUFACTURED HOUSING BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.11 reads as rewritten:

"§ **143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the ~~Board,~~ Board for each place of business operated by the licensee, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed three hundred dollars ($300.00) ~~for any license.~~ for each license issued. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this

information shall be considered by the Board in determining the fitness of the applicant. Once the Board has determined that an applicant is fit, the Board must provide the applicant a license for each place of business operated by the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next ~~year,~~ year by ~~application, accompanied by~~ applying to the Board, completing the necessary hours of continuing education required under G.S. 143-143.11B, and paying the required ~~fee.~~ renewal fee for each place of business operated by the licensee. The renewal fee shall not exceed three hundred dollars ($300.00) for each license issued. Upon failure to ~~renew,~~ renew by the first day of July, a license automatically expires. The license may be renewed at any time within one year after its lapse upon payment of the renewal ~~fee.~~fee and a late filing fee. The late filing fee shall not exceed three hundred dollars ($300.00).

~~(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars ($300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.~~

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Article, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Article, and any other subject matter considered relevant by the Board."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:00 p.m. on the 22nd day of August, 2005.

H.B. 1395 **Session Law 2005-298**

AN ACT TO AMEND THE LAW PROHIBITING THE BAITING OF BLACK BEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1(b) reads as rewritten:

"(b) No wild animals or wild birds may be taken:

(1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:

a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition

of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

b. For transportation incidental to the taking.

(2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute[;] provided, however, that crows and coyotes may be taken with the aid of electronic calling devices. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait. No black bear or wild boar may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait, and no wild turkey may be taken from an area in which bait has been placed until the expiration of 10 days after the bait has been consumed or otherwise removed. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A of this Subchapter.

Upon finding that the placement of processed food products in areas frequented by black bears is detrimental to the health of individual black bears or is attracting and holding black bears in an area to the extent that the natural pattern of movement and distribution of black bears is disrupted and bears' vulnerability to mortality factors, including hunting, is increased to a level that causes concern for the population, the Wildlife Resources Commission may adopt rules to regulate, restrict, or prohibit the placement of those products and prescribe time limits during which hunting is prohibited in areas where those products have been placed.

Any person who is convicted of unlawfully ~~takes~~taking bear or wild boar with the use or aid of any type of bait as provided by this subsection or by rules adopted pursuant to this subsection is punishable as provided by G.S. 113-294(c1)."

SECTION 2. This act becomes effective October 1, 2005, but the Wildlife Resources Commission may make findings and adopt rules on and after the date that this act becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:00 p.m. on the 22nd day of August, 2005.

H.B. 1507 **Session Law 2005-299**

AN ACT TO AMEND CERTAIN LAWS UNDER THE NORTH CAROLINA INTERPRETER AND TRANSLITERATOR LICENSURE ACT, TO EXPAND THE GROUP OF PERSONS WHO MAY OBTAIN A PROVISIONAL LICENSE UNDER THE ACT, AND TO AUTHORIZE THE NORTH CAROLINA INTERPRETER AND TRANSLITERATOR LICENSING BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90D-4(b) is amended by adding the following new subdivision to read:

"(b) The provisions of this Chapter do not apply to:

…

(6) Nonresident persons who are nationally certified providing interpreting or transliterating services in this State no more than 20 days per year in accordance with rules adopted by the Board."

SECTION 2. G.S. 90D-8 reads as rewritten:

"§ **90D-8. Provisional license.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be issued a one-time provisional license as an interpreter or transliterator if the applicant meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) Completes two continuing education units approved by the Board. These units must be completed for each renewable year.

(4) Satisfies one of the following:

a. Holds a quality assurance North Carolina Interpreter Classification System (NCICS) level C classification.

b. Holds a valid National Association of the Deaf (NAD) level 2 or 3 certification.

c. Holds a current Educational Interpreter Performance Assessment (EIPA) level 3 or above classification.

~~d. Holds the following certificates for cued language transliterating coursework: Educational Interpreting Defined, Cued Language Transliterator (CLT) Skill Development I, II, and III, and Ethical Decision Making I.~~

d. Holds at least a two-year interpreting degree from a regionally accredited institution.

(a1) Upon application to the Board, payment of the required fees, and meeting the requirements for a provisional license under subdivisions (1) and (2) of subsection (a) of this section, the Board may also issue a provisional license to any of the following categories of persons seeking a provisional license:

(1) A certified deaf interpreter (CDI) who completes 30 hours of training, including 'Role and Function', 'Code of Ethics', and interpreting professional studies coursework.

(2) An oral interpreter who completes a total of 40 hours of training in interpreting coursework or workshops related to oral interpreting.

(3) A person providing cued speech interpreting or transliterating services who completes a total of 40 hours of training in interpreting coursework or workshops related to cued speech.

(4) A person providing interpreting or transliterating services who has a recognized credential from another state in the field of interpreting or transliterating.

(5) An interpreter or transliterator who has accumulated 200 hours per year in the provision of interpreting or transliterating services, in this State or another state, totaling 400 hours for the two years immediately preceding the date of application.

(b) A provisional license issued under this section shall be valid for one year. Upon expiration, a provisional license may be renewed for an additional one-year period in the discretion of the Board. However, a provisional license shall not be

renewed more than three times. The Board may, in its discretion, grant an extension after the third time the provisional license has been renewed under circumstances to be established in rules adopted by the Board.

(c) Effective July 1, 2008, any person who applies for initial licensure on a provisional basis as an interpreter or transliterator shall hold at least a two-year degree from a regionally accredited institution."

SECTION 3. G.S. 90D-6 is amended by adding the following new subdivision to read:

"§ **90D-6. Powers of the Board.**

The Board shall have the power and duty to:

…

(12) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes."

SECTION 4. Chapter 90D of the General Statutes is amended by adding the following new section to read:

"**§ 90D-14. Civil penalties.**

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not to exceed one thousand dollars ($1,000) for the violation of any section of this Chapter or any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter or rules adopted by the Board.

(d) Costs. – The Board may assess the costs of disciplinary actions against a person found to be in violation of this Chapter or rules adopted by the Board."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:00 p.m. on the 22nd day of August, 2005.

H.B. 1464 **Session Law 2005-300**

AN ACT TO MAKE PERMANENT THE LAW PROVIDING FOR CONSTRUCTION AND DESIGN SUPERVISORY AUTHORITY FOR CERTAIN PROJECTS OF THE UNIVERSITY OF NORTH CAROLINA AND TO REQUIRE REPORTS ON ACTIONS TAKEN UNDER THAT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Section 14(a) of S.L. 2001-496 reads as rewritten:

"**SECTION 14.(a)** Sections 8(a) through 8(e) of this act become effective July 1, 2001. Section 11.1 of this act becomes effective March 1, 2002. The remaining sections of Parts I and II of this act become effective January 1, 2002, and apply to construction projects for which bids or proposals are solicited on or after that date. The remainder of this act is effective when it becomes law. ~~Sections 8(a) through 8(e) of this act expire December 31, 2006.~~"

SECTION 2. G.S. 116-31.11 reads as rewritten:

"§ **116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars ($2,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section.

(e) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded pursuant to this section.

(f) The Board of Governors shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.

(2) The estimated cost of each project along with the actual cost.

(3) The name of each person awarded a contract under this section.

(4) Whether the person or business awarded a contract under this section meets the definition of 'minority business' or 'minority person' as defined in G.S. 143-128.2(g)."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:01 p.m. on the 22nd day of August, 2005.

H.B. 687 **Session Law 2005-301**

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 58A.

"Audiovisual Recordings.

"**§ 14-440.1. Unlawful operation of an audiovisual recording device.**

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

(1) "Audiovisual recording device" means a digital or analog photographic or video camera, or any other technology or device now known or later developed, capable of recording, copying, or transmitting a motion picture, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(b) Offense. – Any person who knowingly operates or attempts to operate an audiovisual recording device in a motion picture theater to transmit, record, or otherwise make a copy of a motion picture, or any part thereof, without the written consent of the motion picture theater owner shall be guilty of a violation of this section.

(c) Penalty. – A violation of this section is punishable as follows:

(1) Unless the conduct is covered under some other provision of law providing greater punishment, any person convicted of a violation of this section is guilty of:

a. A Class 1 misdemeanor, if the violation is a first offense under this section.

b. A Class I felony, if the violation is a second or subsequent offense under this section.

(2) If a person is convicted of any violation of this section, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of the following:

a. All unauthorized copies of motion pictures or other audiovisual works, or any parts thereof.

b. All implements, devices, and equipment used or intended to be used in connection with the offense.

(d) Immunity of Certain Persons. – The owner or lessee of a motion picture theater, or the authorized agent or employee of the owner or lessee, who detains any person shall not be held civilly liable for claims arising out of such detention, when the detention is upon the premises of the motion picture theater or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining the person, the owner, lessee, agent, or employee had, at the time of the detention, probable cause to believe that the person committed an offense under this section. If the person being detained by the owner, lessee, agent, or employee is a minor under the age of 18 years, the owner, lessee, agent, or employee shall call or notify, or make a reasonable effort to call or notify, the parent or guardian of the minor during the period

of detention. An owner, lessee, agent, or employee who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(e) Authorized Activities. – This section does not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 12th day of August, 2005.

Became law upon approval of the Governor at 3:02 p.m. on the 22nd day of August, 2005.

H.B. 1414 **Session Law 2005-302**

AN ACT TO PERMIT TEACHER ASSISTANTS WHO ARE ENROLLED IN TEACHER EDUCATION PROGRAMS TO CONTINUE TO WORK WHILE THEY COMPLETE THEIR STUDENT TEACHING.

The General Assembly of North Carolina enacts:

SECTION 1. Article 20 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-310. Teacher assistants engaged in student teaching.**

The State Board of Education shall adopt a program to facilitate the process by which teacher assistants may become teachers.

Teacher assistants who participate in this program:

(1) Shall be enrolled in an approved teacher education program in a North Carolina institution of higher education; and

(2) Shall be employed in a North Carolina public school.

Local school administrative units are encouraged to assign teacher assistants to a different classroom during student teaching than the classroom they are assigned to as a teacher assistant. To the extent possible, they may be assigned to another school within the same local school administrative unit.

At the discretion of the local school administrative unit, teacher assistants may continue to receive their salary and benefits while student teaching in the same local school administrative unit where they are employed as a teacher assistant.

The State Board of Education shall consult with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities in the development of the program. Each approved teacher education program and each local school administrative unit shall administer this program beginning with the 2005-2006 academic year."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:02 p.m. on the 22nd day of August, 2005.

H.B. 988 **Session Law 2005-303**

AN ACT TO EXCLUDE HIGHWAY USE TAXES AS A FACTOR IN DETERMINING THE TRUE VALUE IN MONEY OF MOTOR VEHICLES FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-330.2(b) reads as rewritten:

"(b) Value; Appeal. – A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. If the assessor considers the sales price of the motor vehicle in determining the true value of the motor vehicle, the assessor must not include any amount for which the taxpayer is liable under Article 5A of this Chapter. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:03 p.m. on the 22nd day of August, 2005.

H.B. 1299 **Session Law 2005-304**

AN ACT TO CLARIFY WHAT THE COST OF REPAIR WORK CONSISTS OF WHEN DETERMINING WHETHER THE COST OF REPAIR WORK IS SUFFICIENT TO REQUIRE A MOTOR VEHICLE REPAIR SHOP TO PREPARE A WRITTEN REPAIR ESTIMATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-354.3(a) reads as rewritten:

"(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars ($350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. In determining under this section whether the cost of the repair work exceeds three hundred fifty dollars ($350.00), the cost of the repair work shall consist of the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, if any, and shall include any taxes, any other repair shop supplies or overhead, and any other extra services that are incidental to the repair work. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the

customer's motor vehicle after the customer has been notified that the repair work has been completed."

SECTION 2. This act becomes effective October 1, 2005, and applies to repair estimates that are made on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

Became law upon approval of the Governor at 3:07 p.m. on the 22nd day of August, 2005.

H.B. 328 **Session Law 2005-305**

AN ACT TO ADD THE CITY OF ALBEMARLE AND THE TOWNS OF BEAUFORT AND SOUTHERN SHORES TO THE MUNICIPALITIES IN WHICH LAW ENFORCEMENT OFFICERS MAY OPERATE UNREGISTERED ALL-TERRAIN VEHICLES ON HIGHWAYS WITH SPEED LIMITS OF THIRTY-FIVE MILES PER HOUR OR LESS AND THE TOWNS OF DUCK, KILL DEVIL HILLS, KITTY HAWK, AND NAGS HEAD TO THE MUNICIPALITIES IN WHICH LAW ENFORCEMENT OFFICERS AND MUNICIPAL EMPLOYEES MAY OPERATE UNREGISTERED ALL-TERRAIN VEHICLES ON HIGHWAYS WITH SPEED LIMITS OF THIRTY-FIVE MILES PER HOUR OR LESS, TO ALLOW THE TOWN OF ST. JAMES TO EXERCISE PLANNING JURISDICTION WITHIN THE CORPORATE LIMITS IN 2005 AND TO ALLOW EXTRATERRITORIAL PLANNING JURISDICTION IN 2010, TO EXEMPT THE TOWN OF LELAND FROM THE REQUIREMENT THAT AN ABC STORE IN BRUNSWICK COUNTY BE LOCATED NO CLOSER THAN SEVEN MILES FROM A MUNICIPALITY WITH AN EXISTING ABC STORE, TO ADD WASHINGTON COUNTY TO THE COUNTIES IN WHICH IT IS ILLEGAL TO REMOVE OR DESTROY AN ELECTRONIC DOG COLLAR, CLARIFYING THE ORANGE COUNTY VOTING CENTERS ACT, AND TO AUTHORIZE THE TOWN OF MATTHEWS TO ADOPT ORDINANCES REGULATING THE REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES WITHIN THAT TOWN, AND TO VALIDATE ELECTIONS AND ACTIONS OF THE PAMLICO COUNTY BOARD OF EDUCATION, AND TO CHANGE THE OFFICE OF TAX COLLECTOR IN HENDERSON COUNTY FROM ELECTIVE TO APPOINTIVE, AND TO RECONFIRM AND VALIDATE NONPARTISAN ELECTIONS FOR THE ELIZABETH CITY-PASQUOTANK BOARD OF EDUCATION AND VALIDATE ACTIONS OF THAT BOARD, AND TO AUTHORIZE THE TOWN OF BLADENBORO TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE TOWN'S PUBLIC NUISANCE ORDINANCE, AND TO CLARIFY THAT CERTAIN STATE LAND IS SUBJECT TO MUNICIPAL PLANNING JURISDICTION AND THE IMPOSITION OF OVERLAY AND SPECIAL USE DISTRICTS BY THE TOWN OF SOUTHPORT WITHOUT THE APPROVAL OF THE COUNCIL OF STATE, AND TO CLARIFY THAT MOREHEAD CITY MAY ORDER OWNERS OF RESIDENTIAL PROPERTY TO REPAIR RATHER THAN VACATE HOUSING AND TO AUTHORIZE THAT CITY TO ORDER DWELLINGS DETERMINED UNFIT FOR HUMAN HABITATION BE REPAIRED OR DEMOLISHED AFTER A PERIOD OF SIX MONTHS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2004-108 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies to the City of Albemarle and the Towns ~~Town~~ of Beaufort, Southern Shores, and Mint Hill only. Section 2 of this act applies to the Towns of Duck, Kill Devil Hills, Kitty Hawk, Nags Head, and the City of Kings Mountain only."

SECTION 2. Section 7.2 of the Charter of the Town of St. James, being S.L. 1999-241, reads as rewritten:

"Section 7.2. **Planning and Regulation of Development.**

Notwithstanding any other provisions of this Charter or the provisions of general law, including the provisions of Article 19 of Chapter 160A of the General Statutes, the Town shall not, prior to ~~December 31, 2009,~~ October 1, 2005, adopt any ordinance creating a planning agency, regulating or restricting the subdivision, zoning, or use of any land, or providing for building inspections. During such time, and until the ordinances adopted by the Town become effective, all planning duties, regulation of development, and building inspections within the jurisdiction of the Town shall be conducted by Brunswick County and governed by the applicable ordinances of Brunswick County as if the area was not in the corporate limits of any municipality. Provided further, the Town may not make any such ordinances effective outside the corporate limits of the Town under G.S. 160A-360 or any other provision of law until January 1, 2010. ~~As of December 31, 2009, either the Town or Brunswick County may terminate such powers of Brunswick County within the jurisdiction of the Town upon 60 days' notice whereupon the Town may adopt subdivision and zoning ordinances and shall become responsible for building inspections in accordance with general law.~~"

SECTION 3. Section 2 of Chapter 372 of the 1991 Session Laws, as amended by Chapter 776 of the 1991 Session Laws, reads as rewritten:

"**Sec. 2.** This act applies to Brunswick County ~~only.~~only, but does not apply to the Town of Leland."

SECTION 4.1. If Senate Bill 98, 2005 Regular Session becomes law, then Section 1 of that act is amended by adding a new subdivision to read:

"(13) If any polling place that had been a satellite voting place in 2004 under G.S. 163-130 is designated as a voting center, the county board of elections may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at the voting center there, and that such voters may not vote at any other voting center on election day."

SECTION 4.2. If Senate Bill 98, 2005 Regular Session becomes law, then that act is amended by adding a new section to read:

"**SECTION 1.1.** If no elections are conducted under this act in 2005, then any or all elections occurring in 2007 may also be held under this act in addition to those in 2006."

SECTION 4. G.S. 14-401.17 reads as rewritten:

"§ **14-401.17. Unlawful removal or destruction of electronic dog collars.**

(a) It is unlawful to intentionally remove or destroy an electronic collar or other electronic device placed on a dog by its owner to maintain control of the dog.

(b) A first conviction for a violation of this section is a Class 3 misdemeanor. A second or subsequent conviction for a violation of this section is a Class 2 misdemeanor.

(c) This act is enforceable by officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and peace officers with general subject matter jurisdiction.

(d) This act applies only to Alamance, Anson, Avery, Beaufort, Brunswick, Buncombe, Burke, Caldwell, Camden, Caswell, Cherokee, Chowan, Clay, Columbus, Craven, Cumberland, Davidson, Graham, Haywood, Henderson, Hyde, Jackson, Macon, Madison, McDowell, Mecklenburg, Mitchell, New Hanover, Orange, Pasquotank, Pitt, Robeson, Rockingham, Swain, Transylvania, Union, Washington, Wilkes, and Yancey Counties."

SECTION 5. Section 6 of S.L. 1997-420 reads as rewritten:

"Section 6. Sections 4, 5, and 6 of this act shall apply only to the Towns of Cornelius, Davidson, Huntersville, Matthews, and Nags Head."

SECTION 6.(a) Section 10 of Chapter 939 of the 1987 Session Laws reads as rewritten:

"**Sec. 10.** ~~In 1990 and quadrennially thereafter, members shall be elected from Districts 3 and 4 for four-year terms,~~ In 2006 and quadrennially thereafter, a member shall be elected from District 4 for a four-year term, and two members shall be elected at-large for four-year terms. In ~~1992~~ 2008 and quadrennially thereafter, members shall be elected from Districts 1, 2, 3, and 5 for four-year terms."

SECTION 6.(b) The elections for the District 3 seat on the Pamlico County Board of Education since January 1, 1996, are validated, notwithstanding the irregularity in the term of office for which the member was elected in 1996 and the fact that subsequent elections were held in 2000 and 2004 rather than in 1998 and 2002, and any and all actions of the District 3 member since January 1, 1996, are ratified and confirmed notwithstanding the irregularity in the manner of election.

SECTION 8.(a) Section 6 of Chapter 42, Public-Local Laws of 1939, is repealed.

SECTION 8.(b) No Tax Collector shall be elected by the voters of Henderson County in 2006 or thereafter.

SECTION 8.(c) A Tax Collector shall be appointed by the Henderson County Board of Commissioners under G.S. 105-349 to serve a term beginning the first Monday in October of 2007. The subsequent appointment of the Tax Collector shall be in accordance with general law. The current Tax Collector of Henderson County shall serve until that date and until a successor is appointed and qualified. Any vacancy in the office of Henderson County Tax Collector occurring before the first Monday in October of 2007 shall be filled by an appointment by the Henderson County Board of Commissioners to serve the remainder of the unexpired term.

SECTION 9.(a) Section 2 of Chapter 29 of the 1967 Session Laws, as amended by Chapter 8 of the 1977 Session Laws, reads as rewritten:

"Sec. 2. The newly constituted and established Elizabeth City-Pasquotank Board of Education shall consist of seven members, and each of said members shall be residents and qualified voters of the townships according to the membership allocations hereinafter made to said townships as follows:

Providence township, Salem township, Newland township, Mount Herman township and other township areas remaining in Pasquotank County shall be entitled to three ~~members except that no two members shall reside in any one township.~~members.

Elizabeth City township and that portion of other township areas within the Elizabeth City city limits shall be entitled to three members.

One member shall be elected from the county at large, without regard to township."

SECTION 9.(b) Section 3 of Chapter 29 of the 1967 Session Laws, as amended by Chapter 8 of the 1977 Session Laws, reads as rewritten:

"Sec. 3. ~~At the time of the primary and election of State and county officers for the year 1968, there shall be nominated and elected seven members who shall constitute the Elizabeth City-Pasquotank Board of Education. Each of said members shall be residents and electors of the townships as set forth in Section 2 of this Act, and each of said members shall be nominated by the voters of Pasquotank County at large in said primary. The candidates in each township receiving the highest number of votes shall be declared to be nominated, and there shall be no second primary. The persons or candidates so nominated from the townships shall be voted upon by the voters of Pasquotank County at large in said election. Each candidate for nomination for membership on the Elizabeth City-Pasquotank Board of Education shall file a notice of candidacy with the Board of Elections showing the township of which said candidate is a resident and also showing the candidate's party affiliation. All candidates for nomination from the various townships shall file such notice of candidacy by noon on or before the sixth Saturday before the date on which the primary is to be held and shall pay a filing fee of ten dollars ($10.00). The nomination and election of said members of the Elizabeth City-Pasquotank Board of Education shall be held, conducted and supervised by the Board of Elections, and except as herein provided the general election laws and regulations for the nomination and election of county officers, and as set forth in Chapter 163 of the General Statutes, as amended, shall apply and govern as to the holding of said primary and election. The three candidates whose residence is within the Elizabeth City township and that portion of other township areas within the Elizabeth City corporate limits, who receive the highest number of votes in descending order, shall serve as follows:~~

~~(1) Highest vote-6 year term.~~

~~(2) Second highest vote-4 year term.~~

~~(3) Third highest vote-2 year term.~~

~~The three candidates whose residence is within the Providence township, the Salem township, the Newland township, the Mount Hermon township or other township areas remaining in Pasquotank County, who receive the highest number of votes in descending order, shall serve as follows:~~

~~(1) Highest vote-6 year term.~~

~~(2) Second highest vote-4 year term.~~

~~(3) Third highest vote-2 year term.~~

~~The candidate, running at large, who receives the highest number of votes shall serve a six-year term.~~

~~The seven candidates receiving the highest number of votes, as outlined in Section 3, in the election shall be certified and declared by the Board of Elections to be the elected members of the Elizabeth City-Pasquotank Board of Education.~~

~~Biennially thereafter, at each primary and election for the nomination and election of State and County officers, the vacancies occurring in the membership of said Board shall be filled by nomination and election as the said terms of the members expire, and all such members so elected shall hold office for terms of four years. The members of said Board nominated and elected in the primary and general election of 1968 shall take office on the first Monday in December, 1968, and the terms of their office shall date and extend from that time. All vacancies in the membership of the Elizabeth City-Pasquotank Board of Education by reason of death, resignation or removal from township shall be filled by the remaining members of said Board from area of residence where vacancy occurs for the complete unexpired term within 60 days after vacancy occurs.~~

~~In the event no candidate is elected in the General Election to fill any term which is to expire, then and in that event, the Elizabeth City-Pasquotank Board of Education shall declare a vacancy, and such vacancy shall be filled in accordance with Section 3.~~ Three members of the Board shall be residents within the Elizabeth City Township, hereinafter referred to as "inside members", and three members of the Board shall be residents of the other townships outside Elizabeth City Township, hereinafter referred to as "outside members". The remaining member shall hereinafter be referred to as the "at-large member" and shall be a county resident with no residence required within a particular township area.

Candidates for membership on the Board shall file for office at the same time and on the same terms and conditions as candidates for other county offices. Candidates shall file, based upon residency, for any available "inside member" seats, "outside member" seats, or the "at-large member" seat that they qualify for by virtue of the residency at the time of filing. However, there shall be no primary, and filed candidates for each type of available seat shall be placed on the general election ballot to be voted on by all qualified voters of the county. Each voter shall have the right to vote in each race for "inside member" seats, "outside members" seats, or the "at-large member" seat up to the number of open seats up for election as to each particular type of seat, but may not cast more than one vote for each candidate. The election shall be held on a nonpartisan plurality basis with the candidates receiving the highest number of votes for each type of seat filling the available open seat or seats in descending order of their vote totals. Candidates elected shall take office the first Monday in December, and shall serve a four-year term.

All vacancies shall be filled by appointment by the remainder of the Board within 60 days, and the person so appointed shall serve the remainder of the unexpired term.

Terms shall be staggered, with two "inside member" seats and two "outside member" seats being elected in 2006 and every four years thereafter, and one "inside member" seat, one "outside member" seat, and the "at-large member" seat being elected in 2008 and every four years thereafter.

The Elizabeth City-Pasquotank Board of Education shall elect a chairman and vice chairman to preside over its meetings, and the vice chairman shall be entitled to vote in all matters being considered by said Board but neither the chairman nor the vice chairman shall have the authority to cast a vote to create a tie vote and then vote again to break the tie. The Elizabeth City-Pasquotank Board of Education shall control, administer and operate all of the public schools in Pasquotank County, including the public schools now located in the Elizabeth City Administrative Unit, as well as the public schools now located in the Pasquotank County Administrative Unit. The Elizabeth City-Pasquotank Board of Education shall exercise all the powers, authority and duties as are now exercised and performed by city and county boards of education and as provided by Chapter 115 of the General Statutes, as revised and amended, and as the same may hereafter be revised and amended. All members of the said Board shall hold their offices until their successors are elected and qualified."

SECTION 9.(c) The General Assembly reconfirms that it was the intent of Chapter 29 of the 1967 Session Laws to provide for nonpartisan elections for the Elizabeth City-Pasquotank Board of Education, which has been reflected in the conduct of those elections since 1967. The elections for the seats on the Elizabeth City-Pasquotank Board of Education since 1967 are validated, and any and all actions of the members since 1967 are ratified and confirmed.

SECTION 10.(a) A municipality may notify a chronic violator of the municipality's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality gave notice of violation at least three times under any provision of the public nuisance ordinance.

SECTION 10.(b) This section applies to the Town of Bladenboro only.

SECTION 11.(a) G.S. 160A-392 reads as rewritten:

"§ **160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.**

All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings and land by the State of North Carolina and its political subdivisions.

~~Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within a conditional use district without approval of the Council of State or its designate.~~

With respect to the docks, buildings, and land at Southport under the control of the State Ports Authority as defined by G.S. 143B-453, all of the provisions of this Part shall apply and are made applicable to those docks, buildings, and land, including those properties being subject to municipal planning and zoning jurisdiction and the imposition of overlay and special use districts."

SECTION 11.(b) This section applies to the Town of Southport only.

SECTION 12.(a) G.S. 160A-443 reads as rewritten:

"§ **160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the

complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation; or~~ habitation.

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve ~~or to vacate and close~~ the dwelling, the public officer may cause the dwelling to be repaired, altered or ~~improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor.~~ improved.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and

shall be indexed in the name of the property owner in the grantor index.

~~(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:~~

~~a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;~~

~~b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,~~

~~then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:~~

~~a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or~~

~~b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.~~

~~This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and~~

~~shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.~~

~~This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).~~

~~[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]~~

(5b) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of six months ~~one year~~ pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of six months ~~one year~~ pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such six-month ~~one year~~ period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding

fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

~~This subdivision applies to the Cities of Eden, Greenville, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.~~

(6) Liens. –

a. That the amount of the cost of repairs, alterations or improvements, ~~or vacating and closing,~~ or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter.

b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing

the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under ~~subdivisions (4) and~~ subdivision (5) of this section to ~~vacate and close or~~ remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be ~~vacated and closed, or~~ removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition."

SECTION 12.(b) This section applies only to Morehead City.

SECTION 13. Sections 1 through 3 and Sections 5 through 13 of this act are effective when it becomes law. Section 4 of this act becomes effective October 1, 2005, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law on the date it was ratified.

H.B. 691 **Session Law 2005-306**

AN ACT AUTHORIZING THE TOWN OF CARRBORO TO LEVY A MOTOR VEHICLE TAX NOT TO EXCEED TWENTY-FIVE DOLLARS AND RELATING TO THE IMPOSITION OF A MUNICIPAL TAX FOR PUBLIC TRANSPORTATION BY THE TOWN OF BLACK MOUNTAIN.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-97(b) reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~five dollars ($5.00)~~ twenty-five dollars ($25.00) per year upon any vehicle resident in the city or town. The proceeds of the tax may be used for any lawful purpose."

SECTION 1.(b) Section 3 of Chapter 392 of the 1991 Session Laws, as amended by Section 5.1 of Chapter 339 of the 1995 Session Laws, is repealed effective upon the date the Town of Carrboro acts to levy an additional tax under this act.

SECTION 1.(c) This section applies to the Town of Carrboro only.

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

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

SECTION 2.(b) This section applies to the Town of Black Mountain only.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law on the date it was ratified.

H.B. 1034 **Session Law 2005-307**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE ROCKINGHAM COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the PLAN FOR MERGER OF THE PUBLIC SCHOOL SYSTEMS IN ROCKINGHAM COUNTY INTO ONE SYSTEM, as approved by the State Board of Education on July 2, 1992, under G.S. 115C-67, effective from the first Monday in December of 2006 until the first Monday in

December of 2008, the Rockingham County Consolidated Board of Education consists of 13 members as follows:

(1) Five elected from the county at large; and

(2) Eight elected from districts, one each from a single-member district by the voters of that district. These eight members shall continue to represent the seats elected in 2002 and those elected in 2004. The terms of office of the four members that were to expire on the second Tuesday in December of 2006 are extended until the first Monday in December of 2008. The terms of office of the four members elected in 2004 to serve until the second Tuesday in December of 2008 shall instead terminate on the first Monday in December of 2008. If any vacancies occur in any of these seats prior to the first Monday in December of 2008, the Rockingham County Board of Commissioners shall appoint replacements from the same district to serve the remainder of the term. The Rockingham County Board of Education shall nominate one or more persons for each vacancy, and the Board of Commissioners may not appoint someone not nominated by the Board of Education.

SECTION 2. Notwithstanding the PLAN FOR MERGER OF THE PUBLIC SCHOOL SYSTEMS IN ROCKINGHAM COUNTY INTO ONE SYSTEM, as approved by the State Board of Education on July 2, 1992, under G.S. 115C-67, effective from the first Monday in December of 2008, the Rockingham County Consolidated Board of Education consists of 11 members as follows:

(1) Five elected from the county at large; and

(2) Six elected from districts, one each from a single-member district by the voters of that district. The boundaries of the districts shall be determined by Section 5 of this act.

SECTION 3. The five at-large members shall be elected in 2006 and quadrennially thereafter for four-year terms. The six district members shall be elected in 2008 and quadrennially thereafter for four-year terms. In case of any vacancy, the Rockingham County Board of Commissioners shall appoint a replacement to serve the remainder of the unexpired term. The Rockingham County Board of Education shall nominate one or more persons for each vacancy, and the Board of Commissioners may not appoint someone not nominated by the Board of Education.

SECTION 4. The six districts are as follows:

District 1: Rockingham County: Precinct Bethlehem: Tract 411: Block Group 1: Block 1000, Block 1001, Block 1023, Block 1027, Block 1028, Block 1029, Block 1999; Precinct Draper: Tract 402: Block Group 2: Block 2028, Block 2029; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Block Group 4: Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4998, Block 4999; Tract 403: Block Group 3: Block 3999; Precinct Mayfield: Tract 401.01: Block Group 1: Block 1001; Precinct Oregon Hill: Tract 401.01: Block Group 1: Block 1002, Block 1003, Block 1005, Block 1008; Block Group 3: Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018; Tract 411: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1024,

Block 1025, Block 1026; Precinct Reidsville 1: Tract 401.02: Block Group 3: Block 3001, Block 3004, Block 3005; Tract 413: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030; Block Group 4: Block 4000, Block 4002, Block 4003; Precinct Reidsville 2: Tract 401.01: Block Group 3: Block 3030; Block Group 4: Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Tract 401.02: Block Group 3: Block 3006, Block 3008, Block 3009, Block 3010, Block 3011; Tract 412: Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7005, Block 7006; Tract 413: Block Group 4: Block 4001, Block 4004, Block 4005, Block 4006, Block 4007, Block 4014, Block 4017, Block 4024, Block 4025; Tract 414: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1004, Block 1005; Block Group 2: Block 2003, Block 2004, Block 2018; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3009, Block 3011, Block 3012, Block 3015, Block 3016, Block 3017; Precinct Reidsville 3: Tract 412: Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028; Block Group 6: Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6022; Block Group 7: Block 7003, Block 7004, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7022; Tract 414: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1033, Block 1034; Tract 415: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2013, Block 2014, Block 2015, Block 2017; Block Group 3: Block 3009, Block 3010, Block 3011, Block 3012; Precinct Reidsville 4: Tract 412: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009; Block Group 2, Block Group 3, Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016; Block Group 7: Block 7021, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029; Precinct Reidsville 5: Tract 414: Block Group 1: Block 1020, Block 1021, Block 1029, Block 1030, Block 1031, Block 1032, Block 1035; Block Group 2: Block 2011, Block 2012, Block 2015; Tract 415: Block Group 1: Block 1000, Block 1001, Block 1002; Block Group 2: Block 2018, Block 2019, Block 2020; Block Group 3: Block 3000, Block 3001; Precinct Reidsville 6: Tract 414: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2017, Block 2021; Precinct Williamsburg: Tract 413: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3024, Block 3025; Tract 414: Block Group 2: Block 2022, Block 2024; Tract 416: Block Group 4: Block 4000, Block 4001, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035

District 2: Rockingham County: Precinct Draper: Tract 402: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004,

Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 3: Block 3000, Block 3001, Block 3006, Block 3007, Block 3008, Block 3021, Block 3022; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015; Precinct Mayfield: Tract 401.01: Block Group 1: Block 1000, Block 1999; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3008, Block 3009, Block 3010, Block 3011; Tract 401.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1009, Block 1010, Block 1011; Precinct Oregon Hill: Tract 401.01: Block Group 1: Block 1004, Block 1006, Block 1007; Block Group 3: Block 3006, Block 3007, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3999; Precinct Reidsville 1: Tract 401.02: Block Group 2: Block 2032; Block Group 3: Block 3000, Block 3002, Block 3003; Tract 413: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1008, Block 1012, Block 1031, Block 1032, Block 1998; Precinct Reidsville 2: Tract 401.02: Block Group 2: Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031; Block Group 3: Block 3007; Tract 413: Block Group 4: Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4015, Block 4016, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Tract 414: Block Group 1: Block 1003, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2014; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3010, Block 3013, Block 3014, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023; Precinct Reidsville 5: Tract 414: Block Group 2: Block 2013; Precinct Ruffin, Precinct Spray 1, Precinct Williamsburg: Tract 413: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1999; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3008, Block 3009, Block 3010, Block 3011, Block 3023

District 3: Rockingham County: Precinct Ironworks: Tract 415: Block Group 5: Block 5004, Block 5005, Block 5006, Block 5009, Block 5010, Block 5997; Tract 416: Block Group 3, Block Group 4: Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4999; Precinct Oregon Hill: Tract 401.01: Block Group 4: Block 4007; Precinct Reidsville 3: Tract 415: Block Group 2: Block 2011, Block 2012, Block 2016; Block Group 3: Block 3006, Block 3007, Block 3008; Precinct Reidsville 4: Tract 411: Block Group 6: Block 6004, Block 6005, Block 6030; Tract 412: Block Group 1: Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Block Group

7: Block 7030, Block 7031, Block 7032; Precinct Reidsville 5: Tract 415: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4016; Precinct Reidsville 6: Tract 414: Block Group 2: Block 2016, Block 2019, Block 2020, Block 2023; Tract 415: Block Group 3: Block 3018, Block 3019, Block 3020; Block Group 4: Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029; Block Group 5: Block 5002, Block 5003, Block 5007, Block 5008, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5996, Block 5998, Block 5999; Precinct Simpsonville, Precinct Wentworth, Precinct Williamsburg: Tract 416: Block Group 4: Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042

District 4: Rockingham County: Precinct Bethlehem: Tract 411: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1998; Block Group 2: Block 2000, Block 2007, Block 2009, Block 2010, Block 2011, Block 2999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4004, Block 4028; Precinct Central Area, Precinct Leaksville 1, Precinct Leaksville 2, Precinct Leaksville 3: Tract 404: Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035; Block Group 4: Block 4006, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013; Block Group 5: Block 5019, Block 5020, Block 5033, Block 5034; Tract 405.01: Block Group 1: Block 1020, Block 1029; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3010, Block 3011, Block 3012, Block 3013; Precinct Oregon Hill: Tract 411: Block Group 1: Block 1012

District 5: Rockingham County: Precinct Dan Valley, Precinct Hogans, Precinct Huntsville, Precinct Ironworks: Tract 416: Block Group 4: Block 4021, Block 4022; Block Group 5: Block 5009, Block 5010, Block 5020; Precinct Madison 2: Tract 407: Block Group 4: Block 4006, Block 4007, Block 4008, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4999; Block Group 5: Block 5008, Block 5019, Block 5020, Block 5021, Block 5022; Precinct New Bethel

District 6: Rockingham County: Precinct Leaksville 3: Tract 404: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5021, Block 5022, Block 5998, Block 5999; Tract 405.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028; Precinct Madison 1, Precinct Madison 2: Tract 407: Block Group 2: Block 2015, Block 2016, Block 2017; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5025; Precinct Martins, Precinct Mayodan, Precinct Price, Precinct Shiloh, Precinct Stoneville.

SECTION 5. Section 2 of Chapter 15 of the 1993 Session Laws reads as rewritten:

"Sec. 2. (a) Notwithstanding G.S. ~~163-279(a)(4)~~ 163-279(a)(1) and Section IV.B. of the PLAN FOR MERGER OF THE PUBLIC SCHOOL SYSTEMS IN ROCKINGHAM COUNTY INTO ONE SYSTEM, as approved by the State Board of Education on July 2, 1992, under G.S. 115C-67, the election of the Rockingham County Consolidated Board of Education shall take place on the Tuesday after the first Monday in November of each year that the PLAN FOR MERGER OF THE PUBLIC SCHOOL SYSTEMS IN ROCKINGHAM COUNTY INTO ONE SYSTEM calls for an election to take ~~place, and the runoff election, if required, shall be on the fourth Tuesday thereafter.~~place.

(b) Notwithstanding Section IV.D. of the PLAN FOR MERGER OF THE PUBLIC SCHOOL SYSTEMS IN ROCKINGHAM COUNTY INTO ONE SYSTEM, as approved by the State Board of Education on July 2, 1992, under G.S. 115C-67, ~~in any year where a runoff election is required for the Rockingham County Consolidated Board of Education and the date of the runoff is after the first Monday in December,~~ the election shall be decided on a plurality basis under G.S. 163-292, and all the newly elected board members shall take office on the ~~second Tuesday~~ first Monday in December following their election."

SECTION 6. The chair of the Rockingham County Consolidated Board of Education shall be elected by the Board from among its members at the organizational meeting after each election to serve until the organizational meeting of the Board after the next election.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law on the date it was ratified.

H.B. 1078 **Session Law 2005-308**

AN ACT AUTHORIZING THE TOWN OF ANGIER AND THE TOWN OF LAGRANGE TO GIVE ANNUAL NOTICE TO VIOLATORS OF THE TOWNS' WEEDED LOT ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Angier and the Town of LaGrange may notify a violator of the municipality's weeded lot ordinance that if the violator's property is

found to be in violation of the ordinance again in the calendar year in which notice is given, the municipality shall, without further notice, take action to remedy the violation, and the expense of that action shall be charged to the violator. The notice may also provide that for each additional violation the municipality shall charge the violator the expense of the action and a surcharge of up to fifty percent (50%) over the expense to remedy the preceding violation. Notice of violation shall be served by registered or certified mail.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law on the date it was ratified.

S.B. 289 **Session Law 2005-309**

AN ACT TO CHANGE THE ELECTION OF THE CHATHAM COUNTY BOARD OF EDUCATION FROM THE PRIMARY TO THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3(c) of Chapter 80 of the 1995 Session Laws reads as rewritten:

"(c) The election shall be nonpartisan, and no primary election shall be held. The election shall be held at the same time as the ~~regular primary~~ general election for county officers, and except as provided in this section, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes regulating general elections."

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

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law on the date it was ratified.

H.B. 813 **Session Law 2005-310**

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO ENACT ORDINANCES TO RESTRICT OR PROHIBIT SOLICITATION ON STATE HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-175 is amended by adding a new subsection to read:

"(d) Local governments may enact ordinances restricting or prohibiting a person from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. This subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:52 a.m. on the 25th day of August, 2005.

H.B. 490 **Session Law 2005-311**

AN ACT TO AMEND THE LAW WITH REGARD TO MAKING A FALSE REPORT CONCERNING A DESTRUCTIVE DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-69.1 reads as rewritten:

"§ **14-69.1. Making a false report concerning destructive device.**

(a) Except as provided in subsection (c) of this section, any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located in or in sufficient proximity to cause damage to any building, house or other structure whatsoever or any vehicle, aircraft, vessel or boat any device designed to destroy or damage the building, house or structure or vehicle, aircraft, vessel or boat by explosion, blasting or burning, is guilty of a Class H felony.

(b) Repealed by S.L. 1997-443, s. 19.25(cc).

(c) Any person who, by any means of communication to any person or groups of persons, makes a report, knowing or having reason to know the report is false, that there is located in or in sufficient proximity to cause damage to any public building any device designed to destroy or damage the public building by explosion, blasting, or burning, is guilty of a Class H felony. Any person who receives a second conviction for a violation of this subsection within five years of the first conviction for violation of this subsection is guilty of a Class G felony. For purposes of this subsection, "public building" means educational property as defined in G.S. 14-269.2(a)(1), a hospital as defined in G.S. 131E-76(3), a building housing only State, federal, or local government offices, or the offices of State, federal, or local government located in a building that is not exclusively occupied by the State, federal, or local government.

(d) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

(e) For purposes of this section, the term "report" shall include making accessible to another person by computer."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:07 p.m. on the 25th day of August, 2005.

H.B. 35 **Session Law 2005-312**

AN ACT TO INCREASE THE FEE PAID BY DWI OFFENDERS FOR ATTENDING AN ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOL, TO INCREASE THE AMOUNT REMITTED FROM THE FEE BY AN AREA FACILITY TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO INCREASE THE QUALIFICATIONS OF PERSONS WHO WILL BE ELIGIBLE TO PROVIDE ADET SCHOOL INSTRUCTION, TO DIRECT THE COMMISSION

ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO MODIFY THE RULES REGARDING THE NUMBER OF INSTRUCTIONAL HOURS AND MAXIMUM ADET SCHOOL CLASS SIZE, AND TO REQUIRE THE DEPARTMENT TO ESTABLISH AN OUTCOMES EVALUATION STUDY ON THE EFFECTIVENESS OF SUBSTANCE ABUSE SERVICES AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-142.1(f) reads as rewritten:

"(f) Fees. – A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a ~~treatment facility or~~ school a fee of ~~seventy-five dollars ($75.00).~~one hundred sixty dollars ($160.00). A person shall pay to a treatment facility a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

~~An area~~A facility shall remit to the Department ~~five percent (5%)~~ ten percent (10%) of each fee paid to the ~~area~~ facility under this subsection by a person who attends an ADET school conducted by the ~~area~~ facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools."

SECTION 2. G.S. 122C-142.1 is amended by adding a new subsection to read:

"(d1) Persons Authorized to Provide Instruction. – Beginning January 1, 2009, individuals who provide ADET school instruction as a Department-authorized ADETS instructor must have at least one of the following qualifications:

(1) Certified Substance Abuse Counselor (CSAC), as defined by the Commission.

(2) Certified Clinical Addiction Specialist (CCAS), as defined by the Commission.

(3) Certified Substance Abuse Prevention Consultant (CSAPC), as defined by the Commission."

SECTION 3. The Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services shall revise its rules regarding the number of instructional program hours and the class size for ADET schools. The minimum program hours of instruction shall not be less than 16 hours. The maximum class size shall not be more than 20 participants.

SECTION 4. G.S. 122C-142.1 is amended by adding a new subsection to read:

"(j) The Department shall establish an outcomes evaluation study on the effectiveness of substance abuse services provided to persons who obtain a certificate of completion under G.S. 20-17.6 as a condition for restoration of a drivers license. The findings of the study shall be reported every two years to the Joint Legislative

Commission on Governmental Operations. The Department shall submit an initial report on the findings of the study to the Commission no later than December 31, 2007, and shall submit a report to the Commission every two years following that date."

SECTION 5. Section 1 becomes effective when the rules adopted under Section 3 of this act become effective and shall apply to fees charged for ADET school instruction that commences on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:08 p.m. on the 25th day of August, 2005.

H.B. 116 **Session Law 2005-313**

AN ACT TO CLARIFY PRESENT-USE VALUE ELIGIBILITY, TO AMEND THE PERIOD FOR APPEAL OF A PRESENT-USE VALUE DETERMINATION OR APPRAISAL, TO MODIFY THE TAX YEAR FOR MOTOR VEHICLES THAT ARE TO BE SWITCHED FROM AN ANNUAL SYSTEM OF REGISTRATION TO A STAGGERED SYSTEM EFFECTIVE JANUARY 1, 2006, AND TO APPLY THE SAME PENALTY THAT CURRENTLY APPLIES TO PAYMENTS BY CHECK TO PROPERTY TAX PAYMENTS MADE BY ELECTRONIC PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. **G.S. 105-277.2(3) reads as rewritten:**

"(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land."

SECTION 2. **G.S. 105-277.2(7) reads as rewritten:**

"(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same

~~ownership.~~ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. ~~105-277.3(a) and share one of the following characteristics:~~

~~a. Type of classification.~~

~~b. Use of the same equipment or labor force.~~105-277.3(a)."

SECTION 3. **G.S. 105-277.3(b2) reads as rewritten:**

"(b2) Exception to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) Exception for assumption of deferred liability. – If the land qualifies for classification in the hands of the new owner under the provisions of this ~~subsection,~~subdivision, then the deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

~~(1)~~a. The land was appraised at its present use value ~~or was eligible for appraisal at its present use value~~ at the time title to the land passed to the new owner.

~~(2)~~b. At the time title to the land passed to the new owner, the new owner acquires the land for the purposes of and continues to use the land for the purposes it was classified under subsection (a) of this section while under previous ownership.

~~(3)~~c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for the deferred taxes and intends to continue the present use of the land.

(2) Exception for expansion of existing unit. – If deferred liability is not assumed under subdivision (1) of this subsection, the land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a)."

SECTION 4. **G.S. 105-277.4(b1) reads as rewritten:**

"(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. An appeal must be made within 60 days after the decision of the assessor. If an owner submits additional information to the assessor pursuant to G.S. 105-296(j), the appeal must be made within 60 days after the assessor's decision based on the additional information. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 5. **G.S. 105-277.7(c)(1) and (c)(5) read as rewritten:**

"(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic ~~area.~~area, and the crop as either agricultural or horticultural. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from contracts with federal or State agencies as needed.

…

(5) Recommendations concerning any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land and horticultural land based on a calculation to be determined by the Board. The Board shall annually report these recommendations to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

SECTION 6. **G.S. 105-289(a)(7) reads as rewritten:**

"(a) It is the duty of the Department of Revenue:

…

(7) To conduct studies of the cash rents for agricultural and horticultural lands on a county or a regional basis, such as the Major Land Resource Area map designated and developed by the U.S. Department of Agriculture. The results of the studies must be furnished to the North Carolina Use-Value Advisory Board. The studies may be conducted on any reasonable basis and timetable that will be reflective of rents and values for each local area based on the productivity of the land."

SECTION 7. **G.S. 105-296(j) and (l) read as rewritten:**

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Forest Resources Division of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). ~~The~~ If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the

requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination.

…

(l) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the~~The~~ assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 8. **G.S. 105-330.5(a) reads as rewritten:**

"(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the assessor shall prepare a tax notice for each vehicle; the tax notice shall contain all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration expired or the new registration was applied for. The tax on the motor vehicle is the product of a fraction and the number of months in the motor vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The tax notice shall contain:

(1) The date of the tax notice.
(2) The appraised value of the motor vehicle.
(3) The tax rate of the taxing units.
(4) A statement that the appraised value of the motor vehicle may be appealed to the assessor within 30 days after the date of the notice."

SECTION 9. **G.S. 105-330.6 reads as rewritten:**

"§ **105-330.6. Motor vehicle tax year; transfer of plates; surrender of plates.**

(a) Tax Year. – The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the staggered system begins on the first day of the first month following the date on which the former registration expires or the new registration is applied for and ends on the last day of the ~~twelfth~~ month ~~following the date on which the registration expires or the new registration is applied for.~~ in which the current registration expires. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the annual system begins on the first day of the first month following the date on which the registration expires or the new registration is applied for and ends the following December 31. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) is the fiscal year that opens in the calendar year in which the vehicle is required to be listed.

(a1) Change in Tax Year. – If the tax year for a classified motor vehicle changes because of a change in its registration for a reason other than the transfer of its registration plates to another classified motor vehicle pursuant to G.S. 20-64, and the new tax year begins before the expiration of the vehicle's original tax year, the taxpayer may receive a credit, in the form of a release, against the taxes on the vehicle for the new tax year. The amount of the credit is equal to a proportion of the taxes paid on the vehicle for the original tax year. The proportion is the number of full calendar months remaining in the original tax year as of the first day of the new tax year, divided by ~~12.~~the number of months in the original tax year. To obtain the credit allowed in this subsection, the taxpayer must apply within 30 days after the taxes for the new tax year are due and must provide the county tax collector information establishing the original tax year of the vehicle, the amount of taxes paid on the vehicle for that year, and the reason for the change in registration.

(b) Transfer of Plates. – If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the registration plates from the listed vehicle to another classified motor vehicle pursuant to G.S. 20-64 during the listed vehicle's tax year, the vehicle to which the plates are transferred is not required to be listed or taxed until the current registration expires or is renewed.

(c) Surrender of Plates. – If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within one year after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is ~~12~~ the number of months in the tax year and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

SECTION 10. **G.S. 105-357(b)(2) reads as rewritten:**

"(2) Penalty. – In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by ~~law for the giving of worthless checks,~~law, the penalty for ~~giving~~ presenting in payment of taxes a check or electronic funds transfer that is returned or not completed because of insufficient funds or nonexistence of an account of the drawer or transferor is twenty-five dollars ($25.00) or ten percent (10%) of the amount of the check or electronic invoice, whichever is greater, subject to a maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check or electronic funds transfer was presented for payment, the drawer of the check or transferor of funds had sufficient funds in an account at a financial institution in this State to ~~pay the check~~make the payment and, by inadvertence, the drawer of the check or transferor of the funds failed to draw the check or initiate a transfer on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check or electronic payment was given."

SECTION 11. **Sections 1 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 2005. Sections 8 and 9 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.**

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:09 p.m. on the 25th day of August, 2005.

H.B. 62 **Session Law 2005-314**

AN ACT TO MAKE CHANGES REGARDING THE ADJUTANT GENERAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 127A-19 reads as rewritten:

"§ **127A-19. Adjutant General.**

The military head of the militia shall be the Adjutant General who shall hold the rank of major general. The Adjutant General shall be appointed by the Governor in his capacity as commander in chief of the militia, in consultation with the Secretary of Crime Control and Public Safety, and shall serve at the pleasure of the Governor. No person shall be appointed as Adjutant General who has less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia.

Subject to the approval of the Governor and in consultation with the Secretary, Department of Crime Control and Public Safety, the Adjutant General may appoint a deputy adjutant general for Army National Guard, an assistant adjutant general for Army National Guard, and an assistant adjutant general for Air National Guard, each of whom may hold the rank of brigadier general and who shall serve at the pleasure of the Governor. ~~The assistant adjutant general for Army National Guard shall also serve in the military position of Brigadier General – Line, Deputy, State Area Command~~

~~(STARC) Commander.~~ The Adjutant General may also employ such staff members and other personnel as may be authorized by the Secretary and funded."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:10 p.m. on the 25th day of August, 2005.

H.B. 485 **Session Law 2005-315**

AN ACT TO AUTHORIZE AN EXISTING CHARTER SCHOOL TO ELECT TO PARTICIPATE IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the time limitation contained in G.S. 135-5.3, the Board of Directors of Evergreen Charter School, a charter school located in Asheville, may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes. The election authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3.

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:10 p.m. on the 25th day of August, 2005.

H.B. 237 **Session Law 2005-316**

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"§ **53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

(2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.

b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.

c. The licensee has a consolidated net worth of one hundred million dollars ($100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars ($100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.

d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.

e. The licensee has a net worth of one hundred million dollars ($100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars ($10,000,000,000) and provides the Commissioner with the

unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

(9) Licensee. – A loan officer, <u>limited loan officer,</u> mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

<u>(10a) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.</u>

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

<u>(15a) Parent. – The person that controls an affiliated mortgage banker, as control is defined in subdivision (2a) of this section.</u>

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"§ **53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer or limited loan officer is not effective during any period when that person is not employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer or a limited loan officer ceases to be employed by a mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination

of the loan officer's or limited loan officer's employment or exclusive mortgage broker's authority.

A loan officer or limited loan officer shall not be employed simultaneously by more than one affiliated mortgage banker, mortgage ~~broker~~ broker, or mortgage banker licensed under this Article.

(d) Each affiliated mortgage banker, mortgage ~~broker~~ broker, and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers or limited loan officers who are employed with the affiliated mortgage banker, mortgage ~~broker~~ broker, or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, an affiliated mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

(1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;

(2) The loan officer is employed by a licensed mortgage broker or mortgage banker, and the managing principal of such mortgage broker or mortgage banker (i) certifies to the Commissioner in writing that the managing principal reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the managing principal and the employer will be responsible for the acts of the applicant during the period that such application is pending; and

(3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage banker to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage banker, or the managing principal thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05(c)(1) reads as rewritten:

"(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer

shall not constitute mortgage-lending experience under this subdivision."

SECTION 4. G.S. 53-243.05(e) reads as rewritten:

"(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan ~~officer,~~ officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks."

SECTION 5. Article 19A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked, suspended, or barred.**

(a) An affiliated mortgage banker shall notify the Commissioner when it hires a limited loan officer on forms prescribed by the Commissioner. The form shall contain any information the Commissioner deems necessary including the name, social security number, address, and business location of the limited loan officer. Limited loan officers employed by an affiliated mortgage banker shall:

(1) Be at least 18 years of age.

(2) Work exclusively for an affiliated mortgage banker. The affiliated mortgage banker who hires the limited loan officer shall:

a. Supervise the limited loan officer as required by this Article.

b. Sign the notification form regarding the hiring of the applicant.

c. Certify the applicant is qualified as a limited loan officer subject to background checks, training, testing, and fundamental education requirements.

d. Be jointly and severally liable for any and all claims and damages of any type, including punitive damages pursuant to Chapter 1D of the General Statutes arising out of the limited loan officer's mortgage lending activities, as allowed by law.

(b) An applicant for a limited loan officer license may act provisionally as a limited loan officer during the pendency of the application before the Commissioner for up to 60 days after submission of the completed forms identified in subsection (a) of this section and a written undertaking by the employing affiliated mortgage banker that it will be responsible for all the applicant's mortgage banking activities.

(c) Systems, programs, and procedures used by the affiliated mortgage banker for employment background checks, training, testing, and education by the affiliated mortgage banker shall be submitted to and reviewed by the Commissioner who may approve those which are comparable and functionally equivalent to those for loan officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified of any material changes or modifications to such approved systems, programs, and procedures. The Commissioner may approve those systems, programs, and procedures used by the affiliated mortgage banker for these purposes that meet or exceed programs otherwise accredited by the Commissioner or that have been approved for the affiliated mortgage banker by at least five other states in which the affiliated mortgage banker is licensed and whose licensing requirements are substantially similar to those of North Carolina.

(d) Except as specified in this section, limited loan officers are subject to licensing standards and disciplinary authority in the same way as loan officers under this Article.

(e) A person whose license is revoked, suspended, or barred under this section is prohibited from participating in the mortgage lending business in this State."

SECTION 6. G.S. 53-243.08 reads as rewritten:

"§ **53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, ~~other than an exclusive mortgage broker qualifying under G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer, or in a comparable position in another state. The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article."

SECTION 7. G.S. 53-243.12(a) reads as rewritten:

"(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, managing principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage

lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

j. Has falsely certified attendance or completion of hours at an approved mortgage lending continuing education course."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:11 p.m. on the 25th day of August, 2005.

H.B. 182 **Session Law 2005-317**

AN ACT TO AUTHORIZE EXISTING CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of Success Institute, a charter school in Statesville, and Piedmont Community Charter School in Gastonia may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and

State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A.

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:15 p.m. on the 25th day of August, 2005.

H.B. 779 **Session Law 2005-318**

AN ACT TO INCREASE THE PENALTY FOR AIDING AND ABETTING A STUDENT'S UNLAWFUL ABSENCE FROM SCHOOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-380 reads as rewritten:

"§ **115C-380. Penalty for violation.**

~~Any~~ Except as otherwise provided in G.S. 115C-379, any parent, guardian or other person violating the provisions of this Part shall be guilty of a ~~Class 3~~ Class 1 misdemeanor."

SECTION 2. G.S. 116-235(b)(2) reads as rewritten:

"(2) School Attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a ~~Class 3~~ Class 1 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:17 p.m. on the 25th day of August, 2005.

H.B. 1328 **Session Law 2005-319**

AN ACT TO PROVIDE FOR THE EXPUNCTION OF OFFICIAL RECORDS WHEN A PERSON IS GRANTED A PARDON OF INNOCENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-149. Expunction of records when pardon of innocence is granted.**

(a) If any person is convicted of a crime and receives a pardon of innocence, the person may apply by petition or written motion to the court in which the person was convicted on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. Upon receipt of the petition or written motion, the clerk of court shall verify that an attested copy of the warrant and return granting a pardon of innocence has been filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the warrant and return have been filed, the court shall issue an order of expunction.

(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Motor Vehicles, or any other State or local government agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(c) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:19 p.m. on the 25th day of August, 2005.

H.B. 801 **Session Law 2005-320**

AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200 is amended by adding the following new subsections to read:

"(c) When the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

(1) Any other civil action in this State in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated pursuant to subsection (d) of this section or the court in the juvenile proceeding enters an order dissolving the stay.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to exercise jurisdiction in the juvenile proceeding.

(d) Notwithstanding G.S. 50-13.5(f), the court in a juvenile proceeding may order that any civil action or claim for custody filed in the district be consolidated with the juvenile proceeding. If a civil action or claim for custody of the juvenile is filed in another district, the court in the juvenile proceeding, for good cause and after consulting with the court in the other district, may: (i) order that the civil action or claim for custody be transferred to the county in which the juvenile proceeding is filed; or (ii) order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the county in which the civil action or claim is filed. The court in the juvenile proceeding may also proceed in the juvenile proceeding while the civil action or claim remains stayed or dissolve the stay of the civil action or claim and stay the juvenile proceeding pending a resolution of the civil action or claim."

SECTION 2. G.S. 7B-201 reads as rewritten:

"§ **7B-201. Retention and termination of jurisdiction.**

(a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.

(b) When the court's jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise. Termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding, however, shall not affect any of the following:

(1) A civil custody order entered pursuant to G.S. 7B-911.

(2) An order terminating parental rights.

(3) A pending action to terminate parental rights, unless the court orders otherwise.

(4) Any proceeding in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.

(5) The court's jurisdiction in relation to any new abuse, neglect, or dependency petition that is filed."

SECTION 3. G.S. 7B-402 reads as rewritten:

"§ **7B-402. Petition.**

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or ~~custodian~~ custodian, and ~~shall allege the facts which~~allegations of facts sufficient to invoke jurisdiction over the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2 or

G.S. 14-27.3 and the conception of the juvenile need not be named in the petition. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

(c) Sufficient copies of the petition shall be prepared so that copies will be available for each parent if living separate and apart, the guardian, custodian, or caretaker, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party."

SECTION 4. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-911. Civil child-custody order.**

(a) After making proper findings at a dispositional hearing or any subsequent hearing, the court on its own motion or the motion of a party may award custody of the juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7, as provided in this section, and terminate the court's jurisdiction in the juvenile proceeding.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to

whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed."

SECTION 5. G.S. 50-13.1 is amended by adding a new subsection to read:

"(i) If the child whose custody is the subject of an action under this Chapter also is the subject of a juvenile abuse, neglect, or dependency proceeding pursuant to Subchapter 1 of Chapter 7B of the General Statutes, then the custody action under this Chapter is stayed as provided in G.S. 7B-200."

SECTION 6. This act becomes effective October 1, 2005, and applies to juvenile proceedings and civil actions pending or filed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:25 p.m. on the 25th day of August, 2005.

S.B. 1124 **Session Law 2005-321**

AN ACT TO IMPOSE A PENALTY FOR BREACHING THE CONFIDENTIALITY OF SCHOOL EMPLOYEE PERSONNEL FILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-321 reads as rewritten:

"§ **115C-321. Confidential information in personnel files; access to information.**

(a) All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to ~~employment;~~employment.

(2) The superintendent and other supervisory ~~personnel;~~personnel.

(3) Members of the local board of education and the board's ~~attorney;~~attorney.

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

(b) Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any

portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not in excess of five hundred dollars ($500.00).

(d) Any person, not specifically authorized by this section to have access to a personnel file, who shall knowingly and willfully examine in its official filing place, remove, or copy any portion of a personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined not in excess of five hundred dollars ($500.00)."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:36 p.m. on the 25th day of August, 2005.

H.B. 1202 **Session Law 2005-322**

AN ACT TO CLARIFY ALTERNATIVE REPRESENTATION OF METROPOLITAN PLANNING ORGANIZATIONS ON REGIONAL TRANSPORTATION AUTHORITY BOARDS OF TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-635(a) reads as rewritten:

"(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(3) The chair of each Metropolitan Planning Organization or a member of the Metropolitan Planning Organization designated by the Metropolitan Planning Organization in the territorial jurisdiction. ~~The chair of the Metropolitan Planning Organization may appoint the Chair of the Transportation Advisory Committee, or a designee approved by the Transportation Advisory Committee, as his or her designee.~~

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 10:58 a.m. on the 26th day of August, 2005.

S.B. 223 **Session Law 2005-323**

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER RECORD BY WHICH VOTERS MAY VERIFY THEIR VOTES BEFORE CASTING THEM AND WHICH PROVIDES A BACKUP MEANS OF COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective August 1, 2005, and applicable to any voting systems upgraded or acquired on or after that date and to all voting systems used in the State during any election during or after 2006, G.S. 163-165.7 reads as rewritten:

"§ **163-165.7. Voting systems: powers and duties of State Board of Elections.**

(a) ~~The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved~~ ~~systems shall be valid in any election or referendum held in any county or municipality. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use.~~ Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in

any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as

agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

No voting system acquired or upgraded by a county before August 1, 2005, shall be used in an election during or after 2006 unless the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (8) of this subsection, where those requirements are applicable to the type of voting system involved.

(b) The State Board may also, upon notice and hearing, ~~disapprove~~ decertify types, makes, and models of voting systems. Upon ~~disapproving~~ decertifying a type, make, or model of voting system, the State Board shall determine the process by which the ~~disapproved~~ decertified system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system.~~ A county may appeal a decision by the State Board concerning ~~discontinuance of a voting system~~ the process by which the decertified system is discontinued in that county ~~to the superior court in that county or~~ to the Superior Court of Wake County. The county has 30 days from the time it receives notice of the State Board's decision on ~~discontinuance~~the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, ~~including, but not limited to,~~including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a ~~Types, makes, and models of~~ certified voting ~~systems approved~~ system for use in ~~this State~~that county.

(2) Form of official ballot labels to be used on voting systems.

(3) Operation and manner of voting on voting systems.

(4) Instruction of precinct officials in the use of voting systems.

(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.
(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:
a. State Board of Elections.
b. Office of Information Technology Services.
c. The State chairs of each political party recognized under G.S. 163-96.
d. The purchasing county.
Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.
(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties."

SECTION 1.(a1) G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.
(2) Only properly voted official ballots or paper records of individual voted ballots are introduced into the voting system.
(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there. The rules shall also provide that during that time no one shall remove from the voting enclosure any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting

enclosure could permit compromise of the integrity of either the machine count or the paper record.

(4) All improperly voted official ballots or paper records of individual voted ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 1.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 1.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7, as rewritten by subsection (a) of this section, is amended by adding the following new subsection:

"(a1) Federal Assistance. – The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002."

SECTION 1.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d), as rewritten by subsection (a) of this section, is amended by adding the following new subdivision:

"(11) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 1.(e) G.S. 163-132.5G reads as rewritten:

"§ **163-132.5G. Voting data maintained by precinct.**

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by provisional ballot and by absentee ballot, both mail and one-stop. The county board shall not be required to report provisional and absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election. ~~Those rules shall provide for~~

~~exemptions where the expense of compliance would place a financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year.~~"

SECTION 1.(f) G.S. 163-165.1(e) reads as rewritten:

"(e) Voted ballots and paper records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

(a) Duties of Vendor. – Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections all software that is relevant to functionality, setup, configuration, and operation of the voting system, including, but not limited to, a complete copy of the source and executable code, build scripts, object libraries, application program interfaces, and complete documentation of all aspects of the system including, but not limited to, compiling instructions, design documentation, technical documentation, user documentation, hardware and software specifications, drawings, records, and data. The State Board of Elections may require in its request for proposal that additional items be escrowed, and if any vendor that agrees in a contract to escrow additional items, those items shall be subject to the provisions of this section. The documentation shall include a list of programmers responsible for creating the software and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages.

(2) The vendor shall notify the State Board of Elections of any change in any item required to be escrowed by subdivision (1) of this subsection.

(3) The chief executive officer of the vendor shall sign a sworn affidavit that the source code and other material in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(4) The vendor shall promptly notify the State Board of Elections and the county board of elections of any county using its voting system of any decertification of the same system in any state, of any defect in the same system known to have occurred anywhere, and of any relevant defect known to have occurred in similar systems.

(5) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful violation of any of the duties in subsection (a) of this section is a Class G felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony.

In addition to any other applicable penalties, violations of this section are subject to a civil penalty to be assessed by the State Board of Elections in its discretion in an amount of up to one hundred thousand dollars ($100,000) per violation. A civil penalty assessed under this section shall be subject to the provisions of G.S. 163-278.34(e)."

SECTION 2.(b) This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005.

SECTION 3. Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:

"§ **163-165.8. Voting systems: powers and duties of board of county commissioners.**

The board of county commissioners, with the approval of the county board of elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and ~~purchase or lease~~ acquire any voting system recommended by the county board of elections but may not adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to the purchase of a voting system certified by the State Board of Elections."

SECTION 4. Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

"§ **163-165.9. Voting systems: powers and duties of county board of elections.**

(a) Before approving the adoption and ~~purchase or lease~~ acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) ~~Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer.~~Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended ~~by the proposed vendor or lessor~~ and also witness a demonstration of at least one other type of voting system ~~approved~~ certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system."

SECTION 5.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be

considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

~~(1)~~a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

~~(2)~~b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

~~(3)~~c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 5.(b) G.S. 163-182.2 reads as rewritten:

"§ **163-182.2. Initial counting of official ballots.**

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the

orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163-182.1 and subdivision (1a) of subsection (b) of this section, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between

the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 5.(c) G.S. 163-182.5 reads as rewritten:

"§ **163-182.5. Canvassing votes.**

(a) The Canvass. – As used in this Article, the term "canvass" means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 5.(d) This section becomes effective January 1, 2006.

SECTION 6.(a) G.S. 163-182.7 reads as rewritten:

"§ **163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate

is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates,~~ or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Thursday after the election. If on that Thursday the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 6.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye

count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law."

SECTION 6.(c) This section becomes effective January 1, 2006.

SECTION 7. G.S. 163-82.28 reads as rewritten:

"§ **163-82.28. The HAVA Election Fund.**

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement ~~HAVA.~~ HAVA and for purposes permitted by HAVA to comply with State law."

SECTION 7.1. Each county shall receive a grant of up to twelve thousand dollars ($12,000) per polling place and one-stop site from the Election Fund created under G.S. 163-82.28 for voting equipment that complies with the requirements of HAVA and this act. The grant shall also include two backup units per county. Each county shall also receive a grant equal to one dollar ($1.00) per voter in the 2004 presidential election, but no less than ten thousand dollars ($10,000) or more than one hundred thousand dollars ($100,000), for central administrative software for tabulation.

SECTION 8. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law.

SECTION 9. The State Board of Elections may conduct, for primaries and elections in 2006 only, experiments with voting systems that use a means in addition to paper to fulfill the backup record and voter verification requirements of G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot program may be conducted in no more than nine counties. The county boards of elections shall cooperate in conducting the pilot program. The pilot program shall be conducted according to the following requirements:

(1) The experiment may be conducted in no more than two voting sites per county. The voting sites may include election-day voting places or one-stop sites.

(2) At each voting site in which the experiment is conducted, voters must have a choice of voting on the experimental voting system or on a voting system that is not part of the experiment.

(3) Each experimental voting system shall include an additional means for the voter to verify the choices that the voter makes in the electronically cast ballot, which means shall also provide for an additional count. That additional means may utilize audio technology, digital scanners, or some other material or technology that shall record the voters' choices but shall not record any image of any part of the voter.

(4) On each voting machine or unit used in the experiment, the voting system shall comply with all the applicable requirements of G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that a DRE system must generate a paper backup record of each individual vote cast electronically and the requirement in G.S. 163-165.7(a)(5) that the paper record generated by the DRE system must be viewable by the voter before the vote is cast electronically and that the system allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. On every machine or unit, the experimental means to fulfill those functions shall be used in addition to, rather than instead of, the required paper means.

(5) For all votes cast on an experimental voting system under the pilot, there shall be, in addition to an electronic count, a full hand-to-eye paper count and a full comparison count of the experimental verification technology.

The State Board of Elections shall report the results of the pilot program, together with its recommendations, to the 2007 General Assembly and to the Joint Legislative Commission on Governmental Operations by February 1, 2007.

SECTION 10. The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:00 a.m. on the 26th day of August, 2005.

H.B. 1775 **Session Law 2005-324**

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from

gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both, are as follows:

1	**Appalachian State University**	
	Steam Distribution System – Improvements – Phase III	$ 6,500,000
	Residence Hall – Renovations	$12,000,000
	Parking Facilities – Improvements	$ 2,500,000
2	**East Carolina University**	
	Residence Hall – Heating, Ventilation and Air Conditioning Improvements	$ 2,000,000
	Parking Facilities – Expansion	$ 2,500,000
	Brody School of Medicine – Family Medicine Center	$30,000,000
3	**Elizabeth City State University**	
	Student Housing	$13,500,000
4	**North Carolina Central University**	
	Student Housing	$30,000,000
	Parking Facilities – Expansion	$10,000,000
5	**North Carolina State University**	
	Parking Facilities – Expansion	$ 7,500,000
	Thompson Theater – Renovation and Expansion	$15,500,000
	Residence Halls – Renovation	$20,550,000
	Owen Residence Hall – Expansion and Improvements	$ 3,700,000
	Carter Finley Stadium – Expansion	$14,500,000
	Chancellor's Residence	$ 3,350,000
6	**University of North Carolina at Chapel Hill**	
	Parking Facilities – Expansion	$25,000,000
	Residence Halls – Improvements	$ 5,500,000
	Information Technology Services (ITS) – Infrastructure Improvements	$13,000,000
	Water Reclamation and Reuse Infrastructure	$15,000,000
	Major Infrastructure Improvements	$47,522,000
	Research Resource Facility	$ 1,000,000
	Medical Research – D – Renovations	$ 1,000,000
7	**University of North Carolina at Charlotte**	
	Parking Facilities – Expansion	$14,000,000
8	**University of North Carolina at Greensboro**	
	Recreation Center – Roof Replacement	$ 2,500,000
	Residence Halls Renovation – Phase IV	$ 7,000,000
9	**University of North Carolina at Wilmington**	
	Parking Facilities – Expansion	$ 3,465,000
10	**Winston-Salem State University**	
	Athletic and Student Recreation Facilities	$ 2,670,000
	Bowman Gray Stadium Field House – Expansion and Renovation	$ 1,800,000.

SECTION 3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 6 of this act, or by both**:**

1	**Appalachian State University**	
	Central Dining Hall – Supplement	$ 6,000,000
	Student Recreation Complex – Supplement	$ 5,000,000
2	**North Carolina State University**	
	Classroom Building – Expansion – Supplement	$10,000,000
3	**University of North Carolina at Chapel Hill**	
	Residence College – Phase II – Supplement	$11,000,000
	Genetic Research Building – Supplement	$10,000,000
	Daniels Building Renovations – Supplement	$ 4,000,000
	Parking Facilities – Supplement	$ 1,000,000
	Major Infrastructure Improvements – Supplement	$61,828,000
4	**University of North Carolina at Charlotte**	
	Student Union – Supplement	$ 3,500,000
5	**University of North Carolina at Greensboro**	
	Parking Deck Addition – Supplement	$ 4,000,000
6	**Western Carolina University**	
	New Student Recreation Center – Supplement	$ 1,250,000.

SECTION 4. The following projects are authorized, and the Board of Governors and the respective campuses are authorized to accept gifts and grants, or to use cash available to the constituent institution, for the costs associated with completing the projects:

1	**East Carolina University**	
	Geriatrics Center	$ 3,000,000
	Student Recreation Complex – Phase I	$ 8,000,000
2	**University of North Carolina at Charlotte**	
	Applied Optics and Physics Building – Improvement	$ 4,000,000.

SECTION 5. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 6. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 2 and 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus

twenty million dollars ($20,000,000) for related additional costs, such as issuance expenses, funding of reserve funds, and capitalized interest.

SECTION 7. With respect to the University of North Carolina at Chapel Hill's Water Reclamation and Reuse Infrastructure capital project and Research Resource Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) purchase of capacity in the project from the Orange Water and Sewer Authority.

SECTION 8. With respect to the project at Winston-Salem State University for the Bowman Gray Stadium Field House – Expansion and Renovation, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership of the project, or (ii) by participation in a long-term agreement with the City of Winston-Salem.

SECTION 9. With respect to the project at North Carolina State University for the Carter Finley Stadium – Expansion, the institution may accomplish construction and financing through lease arrangements to and from the North Carolina State University Student Aid Association, Inc.

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:00 a.m. on the 26th day of August, 2005.

S.B. 740 **Session Law 2005-325**

AN ACT TO AMEND THE CERTIFICATE OF NEED LAWS BY REQUIRING A CERTIFICATE OF NEED BEFORE OFFERING CARDIAC CATHETERIZATION SERVICES, EXCEPT WHEN DOING SO PURSUANT TO A SETTLEMENT AGREEMENT WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, REQUIRING HEALTH MAINTENANCE ORGANIZATIONS AND LONG-TERM CARE HOSPITALS TO OBTAIN A CERTIFICATE OF NEED, REQUIRING A CERTIFICATE OF NEED TO PURCHASE CERTAIN EQUIPMENT USED IN CANCER TREATMENT, REQUIRING A CERTIFICATE OF NEED FOR NEW HOSPICE OFFICES AFTER DECEMBER 31, 2005, CHANGING WHO ARE AFFECTED PERSONS ENTITLED TO APPEAL A CERTIFICATE OF NEED DECISION, AUTHORIZING THE FURNISHING OF CARDIAC CATHETERIZATION EQUIPMENT OR SERVICES PURSUANT TO SETTLEMENT AGREEMENTS WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND MAKING OTHER TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-176 reads as rewritten:

"§ **131E-176. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Adult care home" means a facility with seven or more beds licensed under G.S. 131D-2 or Chapter 131E of the General Statutes that provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age and disability and for whom medical care is only occasional or incidental.

(1a) **(See note)** "Air ambulance" means aircraft used to provide air transport of sick or injured persons between destinations within the State.

(1b) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1b) and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.

(1c) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.

(2) "Bed capacity" means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by rules of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage. The term "bed capacity" also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(2a) "Bone marrow transplantation services" means the process of infusing bone marrow into persons with diseases to stimulate the production of blood cells.

(2b) "Burn intensive care services" means services provided in a unit designed to care for patients who have been severely burned.

(2c) "Campus" means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities.

(2d) "Capital expenditure" means an expenditure for a project, including but not limited to the cost of construction, engineering, and equipment which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance. Capital expenditure includes, in addition, the fair market value of an acquisition made by donation, lease, or comparable arrangement by which a person obtains equipment, the expenditure for which would have been considered a capital expenditure under this Article if the person had acquired it by purchase.

~~(2e) "Cardiac angioplasty equipment" means the cardiac catheterization equipment used in surgery for the restoration, repair, or reconstruction of coronary blood vessels.~~

(2f) "Cardiac catheterization equipment" means the equipment ~~required to perform diagnostic procedures or therapeutic intervention in which a catheter is introduced into a vein or artery and threaded through the circulatory system to the heart.~~used to provide cardiac catheterization services.

(2g) "Cardiac catheterization services" means those procedures, excluding pulmonary angiography procedures, in which a catheter is introduced into a vein or artery and threaded through the circulatory system into the heart specifically to diagnose abnormalities in the motion, contraction, and blood flow of the moving heart or to perform surgical therapeutic interventions to restore, repair, or reconstruct the coronary blood vessels of the heart.

(3) "Certificate of need" means a written order which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.

(4) Repealed by Session Laws 1993, c. 7, s. 2.

(5) "Change in bed capacity" means (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176(9c), or (iii) any increase in the number of health service facility beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(5a) "Chemical dependency treatment facility" means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:

a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,

b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,

c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C; and may be identified as "chemical dependency, substance abuse, alcoholism, or drug abuse treatment units," "residential chemical dependency, substance abuse, alcoholism or drug abuse facilities," or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include social setting detoxification facilities, medical detoxification facilities, halfway houses or recovery farms.

(5b) "Chemical dependency treatment beds" means beds that are licensed for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds. Chemical dependency treatment beds shall not include beds licensed for detoxification.

(6) "Department" means the North Carolina Department of Health and Human Services.

(7) To "develop" when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

(7a) "Diagnostic center" means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars ($10,000) or more exceeds five hundred thousand dollars ($500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars ($500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

(7b) "Expedited review" means the status given to an application's review process when the applicant petitions for the review and the Department approves the request based on findings that all of the following are met:

a. The review is not competitive.

b. The proposed capital expenditure is less than five million dollars ($5,000,000).

c. A request for a public hearing is not received within the time frame defined in G.S. 131E-185.

d. The agency has not determined that a public hearing is in the public interest.

(7c) "Gamma knife" means equipment which emits photon beams from a stationary radioactive cobalt source to treat lesions deep within the brain and is one type of stereotactic radiosurgery.

(8), (9) Repealed by Session Laws 1987, c. 511, s. 1.

(9a) "Health service" means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the prevention of disease or the clinical management of a sick, injured, or disabled person. "Health service" does not include administrative and other activities that are not integral to clinical management.

(9b) "Health service facility" means a hospital; long-term care hospital; psychiatric facility; rehabilitation facility; nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; ~~oncology treatment center; hospice,~~ hospice office, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.

(9c) "Health service facility bed" means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) nursing home beds; (v) intermediate care beds for the mentally retarded; (vi) chemical dependency treatment beds; (vii) hospice inpatient facility beds; (viii) hospice residential care facility beds; ~~and~~ (ix) adult care home ~~beds.~~ beds; and (x) long-term care hospital beds.

(10) "Health maintenance organization (HMO)" means a public or private organization which has received its certificate of authority under Article 67 of Chapter 58 of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:

a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;

b. Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(10a) "Heart-lung bypass machine" means the equipment used to perform extra-corporeal circulation and oxygenation during surgical procedures.

(11) Repealed by Session Laws 1991, c. 692, s. 1.

(12) "Home health agency" means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

"Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e. of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:

a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
b. Physical, occupational or speech therapy;
c. Medical social services, home health aid services, and other therapeutic services;
d. Medical supplies, other than drugs and biologicals and the use of medical appliances;
e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(13) "Hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General ~~Statutes.~~Statutes, except long-term care hospitals.

(13a) "Hospice" means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

(13b) "Hospice inpatient facility" means a freestanding licensed hospice facility or a designated inpatient unit in an existing health service facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in an inpatient setting. For purposes of this Article only, a hospital which

has a contractual agreement with a licensed hospice to provide inpatient services to a hospice patient as defined in G.S. 131E-201(4) and provides those services in a licensed acute care bed is not a hospice inpatient facility and is not subject to the requirements in G.S. 131E-176(5)(ii) for hospice inpatient beds.

(13c) "Hospice residential care facility" means a freestanding licensed hospice facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in a group residential setting.

(14) Repealed by Session Laws 1987, c. 511, s. 1.

(14a) "Intermediate care facility for the mentally retarded" means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.

(14a1) "Kidney disease treatment center" means a facility that is certified as an end-stage renal disease facility by the Centers for Medicare and Medicaid Services, Department of Health and Human Services, pursuant to 42 C.F.R. § 405.

(14b) Repealed by Session Laws 1991, c. 692, s. 1.

(14b1) "Linear accelerator" means a machine used to produce ionizing radiation in excess of 1,000,000 electron volts in the form of a beam of electrons or photons to treat cancer patients.

(14c) "Lithotriptor" means extra-corporeal shock wave technology used to treat persons with kidney stones and gallstones.

(14c1) "Long-term care hospital" means a hospital that has been classified and designated as a long-term care hospital by the Centers for Medicare and Medicaid Services, Department of Health and Human Services, pursuant to 42 C.F.R. § 412.

(14d) Repealed by Session Laws 2001-234, s. 2, effective January 1, 2002.

(14e) "Magnetic resonance imaging scanner" means medical imaging equipment that uses nuclear magnetic resonance.

(14f) "Major medical equipment" means a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than seven hundred fifty thousand dollars ($750,000). In determining whether the major medical equipment costs more than seven hundred fifty thousand dollars ($750,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. Major medical equipment does not include replacement equipment as defined in this section.

(15) Repealed by Session Laws 1987, c. 511, s. 1.

(15a) "Multispecialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for at least three of the following specialty areas: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedic, or oral surgery.

(15b) "Neonatal intensive care services" means those services provided by a health service facility to high-risk newborn infants who require constant nursing care, including but not limited to continuous cardiopulmonary and other supportive care.

(16) "New institutional health services" means any of the following:

a. The construction, development, or other establishment of a new health service facility.

b. The obligation by any person of a capital expenditure exceeding two million dollars ($2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds two million dollars ($2,000,000).

c. Any change in bed capacity as defined in G.S. 131E-176(5).

d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility.

e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project.

f. The development or offering of a health service as listed in this subdivision by or on behalf of any person:

1. Bone marrow transplantation services.
2. Burn intensive care services.
2a. Cardiac catheterization services, except cardiac catheterization services provided on equipment furnished by a person authorized to operate such equipment in North Carolina pursuant to either a certificate of need issued for mobile cardiac catheterization equipment or a settlement agreement executed by the Department for provision of cardiac catheterization services.
3. Neonatal intensive care services.
4. Open-heart surgery services.
5. Solid organ transplantation services.

f1. The acquisition by purchase, donation, lease, transfer, or comparable arrangement of any of the following equipment by or on behalf of any person:
1. Air ambulance.
~~2. Cardiac angioplasty equipment.~~
3. Cardiac catheterization equipment.
4. Gamma knife.
5. Heart-lung bypass machine.
5a. Linear accelerator.
6. Lithotriptor.
7. Magnetic resonance imaging scanner.
8. Positron emission tomography scanner.
9. Simulator.

g. to k. Repealed by Session Laws 1987, c. 511, s. 1.

l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180.

m. Any conversion of nonhealth service facility beds to health service facility beds.

n. The construction, development or other establishment of a hospice, hospice inpatient facility, or hospice residential care facility;

o. The opening of an additional office by an existing home health agency or hospice within its service area as defined by rules adopted by the Department; or the opening of any office by an existing home health agency or hospice outside its service area as defined by rules adopted by the Department.

p. The acquisition by purchase, donation, lease, transfer, or comparable arrangement by any person of major medical equipment.

q. The relocation of a health service facility from one service area to another.

r. The conversion of a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or the addition of a specialty to a specialty ambulatory surgical program.

s. The furnishing of mobile medical equipment to any person to provide health services in North Carolina, which was not in use in North Carolina prior to the adoption of this provision, if such equipment would otherwise be subject to review in accordance with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had been acquired in North Carolina.

t. Repealed by Session Laws 2001-242, s. 4, effective June 23, 2001.

u. **(See note)** The construction, development, establishment, increase in the number, or relocation of an operating room or operating rooms, other than the relocation of an operating room or operating rooms within the same building or on the same

grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room is or operating rooms are currently located.

(17) "North Carolina State Health Coordinating Council" means the Council that prepares, with the Department of Health and Human Services, the State Medical Facilities Plan.

(17a) "Nursing care" means:

a. Skilled nursing care and related services for residents who require medical or nursing care;

b. Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or

c. Health-related care and services provided on a regular basis to individuals who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities.

These are services which are not primarily for the care and treatment of mental diseases.

(17b) "Nursing home facility" means a health service facility whose bed complement of health service facility beds is composed principally of nursing home facility beds.

(18) To "offer," when used in connection with health services, means that the person holds himself out as capable of providing, or as having the means for the provision of, specified health services.

~~(18a) "Oncology treatment center" means a facility, program, or provider, other than an existing health service facility that provides services for diagnosis, evaluation, or treatment of cancer and its aftereffects or secondary results and for which the total cost of all the medical equipment utilized by the center, exceeds two hundred fifty thousand dollars ($250,000). In determining whether costs are more than two hundred fifty thousand dollars ($250,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the facility, program, or provider shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.~~

(18b) "Open-heart surgery services" means the provision of surgical procedures that utilize a heart-lung bypass machine during surgery to correct cardiac and coronary artery disease or defects.

(19) "Person" means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency or instrumentality of the State.

(19a) "Positron emission tomography scanner" means equipment that utilizes a computerized radiographic technique that employs radioactive substances to examine the metabolic activity of various body structures.

(20) "Project" or "capital expenditure project" means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health service facility.

(21) "Psychiatric facility" means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(22) "Rehabilitation facility" means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.

(22a) "Replacement equipment" means equipment that costs less than two million dollars ($2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars ($2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

(23) Repealed by Session Laws 1991, c. 692, s. 1.

(24) Repealed by Session Laws 1993, c. 7, s. 2.

(24a) "Service area" means the area of the State, as defined in the State Medical Facilities Plan or in rules adopted by the Department, which receives services from a health service facility.

(24a1) "Simulator" means a machine that produces high quality diagnostic radiographs and precisely reproduces the geometric relationships of megavoltage radiation therapy equipment to the patient.

(24b) "Solid organ transplantation services" means the provision of surgical procedures and the interrelated medical services that accompany the surgery to remove an organ from a patient and surgically implant an organ from a donor.

(24c) "Specialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for only the specialty areas identified on the ambulatory surgical facility's 1993 Application for Licensure as an Ambulatory Surgical Center and authorized by its certificate of need.

(25) "State Medical Facilities Plan" means the plan prepared by the Department of Health and Human Services and the North Carolina State Health Coordinating Council, and approved by the Governor. In preparing the Plan, the Department and the State Health Coordinating Council shall maintain a mailing list of persons who have requested notice of public hearings regarding the Plan. Not less than 15 days prior to a scheduled public hearing, the Department shall notify persons on its mailing list of the date, time, and location of the hearing. The Department shall hold at least one public hearing prior to the adoption of the proposed Plan and at least six public hearings after the adoption of the proposed Plan by the State Health Coordinating Council. The Council shall accept oral and written comments from the public concerning the Plan.

(26) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1002, s. 9.

(27) Repealed by Session Laws 1987, c. 511, s. 1."

SECTION 2. G.S. 131E-180 is repealed.

SECTION 3. G.S. 131E-182(a) reads as rewritten:

"(a) The Department in its rules shall establish schedules for submission and review of completed applications. The schedules shall provide that applications for similar proposals in the same ~~health~~ service area will be reviewed together."

SECTION 4. G.S. 131E-185(a1) reads as rewritten:

"(a1) Except as provided in subsection (c) of this section, there shall be a time limit of 90 days for review of the applications, beginning on the day established by rule as the day on which applications for the particular service in the service area shall begin review.

(1) Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than 30 days after the date on which the application begins review. These written comments may include:

a. Facts relating to the service area proposed in the application;

b. Facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the representations made;

c. Discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards.

(2) No more than 20 days from the conclusion of the written comment period, the Department shall ensure that a public hearing is conducted at a place within the appropriate ~~health~~ service area if one or more of the following circumstances apply; the review to be conducted is competitive; the proponent proposes to spend five million dollars ($5,000,000) or more; a written request for a public hearing is received before the end of the written comment period from an affected party as defined in G.S. 131E-188(c); or the agency determines that a hearing is in the public interest. At such public hearing oral arguments may be made regarding the application or applications under review; and this public hearing shall include the following:

a. An opportunity for the proponent of each application under review to respond to the written comments submitted to the Department about its application;

b. An opportunity for any ~~affected person as defined in G.S. 131E-188(c),~~ person, except one of the proponents, to ~~present comments regarding~~ comment on the applications under review;

c. An opportunity for a representative of the Department, or such other person or persons who are designated by the Department to conduct the hearing, to question each proponent of applications under review with regard to the contents of the application;

The Department shall maintain a recording of any required public hearing on an application until such time as the Department's final decision is issued, or until a final agency decision is issued pursuant to a contested case hearing, whichever is later; and any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing.

(3) The Department may contract or make arrangements with a person or persons located within each ~~health~~ service area for the conduct of such public hearings as may be necessary. The Department shall publish, in each ~~health~~ service area, notice of the contracts that it executes for the conduct of those hearings.

(4) Within 15 days from the beginning of the review of an application or applications proposing the same service within the same service area, the Department shall publish notice of the deadline for receipt of written comments, of the time and place scheduled for the public hearing regarding the application or applications under review, and of the name and address of the person or agency that will preside.

(5) The Department shall maintain all written comments submitted to it during the written comment stage and any written submissions received at the public hearing as part of the Department's file respecting each application or group of applications under review by it. The application, written comments, and public hearing comments, together with all documents that the Department used in arriving at its decision, from whatever source, and any documents that reflect or set out the Department's final analysis of the application or applications under review, shall constitute the Department's record for the application or applications under review."

SECTION 5. G.S. 131E-188(c) reads as rewritten:

"(c) The term "affected persons" includes: the applicant; any ~~person~~ individual residing within the service area or the geographic area served or to be served by the applicant; any ~~person~~ individual who regularly uses health service facilities within that geographic ~~area;~~ area or the service area; ~~health service facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located, which provide services similar to the services of the facility under review;~~ any person who provides services, similar to the services under review, to individuals residing within the service area or the geographic area proposed to be served by the applicant; ~~health service facilities and HMOs which,~~ any person

who, prior to receipt by the agency of the proposal being reviewed, ~~have formally indicated~~ has provided written notice to the agency of an intention to provide similar services in the ~~future;~~ future to individuals residing within the service area or the geographic area to be served by the applicant; third party payers who reimburse health service facilities for services in the ~~health~~ service area in which the project is proposed to be located; and any agency which establishes rates for health service facilities or HMOs located in the ~~health~~ service area in which the project is proposed to be located."

SECTION 6. G.S. 131E-176(2f) and (2g), as enacted in this act, shall not preclude the furnishing of cardiac catheterization equipment or the provision of cardiac catheterization services by a person authorized to furnish this equipment or provide these services pursuant to a settlement agreement between the person and the Department of Health and Human Services prior to the effective date of this act.

SECTION 7. G.S. 131E-176, as amended by Section 1 of this act, becomes effective for hospices and hospice offices December 31, 2005. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:03 a.m. on the 26th day of August, 2005.

S.B. 682 **Session Law 2005-326**

AN ACT TO EXTEND TO PUBLIC HEALTH AUTHORITIES, SANITARY DISTRICTS, AND METROPOLITAN SEWERAGE DISTRICTS THE SET-OFF DEBT COLLECTION PROCEDURES CURRENTLY AVAILABLE TO COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"(6) Local agency. – Any of the following:

a. A county, to the extent it is not considered a State agency.

b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes.

f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes."

SECTION 2. This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:05 a.m. on the 26th day of August, 2005.

S.B. 974 **Session Law 2005-327**

AN ACT TO AUTHORIZE THE SALE OF BEER AND WINE AT CERTAIN UNIVERSITY FACILITIES AND CERTAIN COUNTY FACILITIES, AND AUTHORIZE ALCOHOLIC BEVERAGES TO BE MADE AVAILABLE BY SELF-SERVICE IN SUITES OF MAJOR LEAGUE SPORTS FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. ~~Provided, however, this~~ This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 seats."

SECTION 2. G.S. 18B-1006 is amended by adding a new subsection to read:

"(o) County-Owned Facilities. – Notwithstanding any other provision of this Chapter, the Commission shall issue permits to allow the on-premises sales and consumption of beer and wine at a county-owned facility that is located adjacent to or separated by a road right-of-way from a municipality where mixed beverages, on-premises beer, and on-premises wines sales are authorized by law."

SECTION 3. G.S. 18B-1006(o), as enacted by Section 2 of this act, shall expire on December 31, 2005, and shall apply only to a wine festival where 15 or more wineries will be exhibiting their wines, the event is sponsored by a nonprofit organization, and the event lasts for not more than two days. The permits issued pursuant to G.S. 18B-1006(o) shall be valid only for the two days of the event.

SECTION 4. The Commission shall issue a special occasion permit under G.S. 18B-1001(8) to a sports facility occupied by a major league professional sports team with suites available for sale or lease to patrons of the facility to authorize patrons to make available alcoholic beverages in those suites as if the patron were a host of a reception, party or other special occasion. If the patron occupying the suite so desires, alcoholic beverages by self-service may be made available to any person at least 21 years of age possessing a valid ticket to the event authorizing that person to occupy the suite. At no event may the patron make available a quantity of alcoholic beverages in excess of the amount a person is allowed to buy under G.S. 18B-303(a). This section does not authorize any person possessing a valid ticket to an event at the facility to bring alcoholic beverages onto the premises and consume those alcoholic beverages on the premises, or to remove those beverages from the suite.

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:11 a.m. on the 26th day of August, 2005.

H.B. 1217 **Session Law 2005-328**

AN ACT TO INCREASE THE FEE THAT MAY BE COLLECTED BY NOTARIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-10 reads as rewritten:

"§ **10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~three dollars ($3.00)~~ four dollars ($4.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~three dollars ($3.00)~~ four dollars ($4.00) per person.

(3) For verifications or proofs, ~~three dollars ($3.00)~~ four dollars ($4.00) per signature."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:15 a.m. on the 26th day of August, 2005.

S.B. 428 **Session Law 2005-329**

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNAUTHORIZED USE OF A LASER DEVICE TOWARDS AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ **14-280.2. Use of a laser device towards an aircraft.**

(a) Any person who, willfully points a laser device at an aircraft, while the device is emitting a laser beam, and while the aircraft is taking off, landing, in flight, or otherwise in motion, is guilty of a Class H felony.

(b) The following definitions apply to this section:

(1) "Aircraft" is as defined in G.S. 63-1.

(2) "Laser" is as defined in G.S. 14-34.8.

(c) This section shall not apply where the laser use had been approved by a State or federal agency."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:21 a.m. on the 26th day of August, 2005.

H.B. 1271 **Session Law 2005-330**

AN ACT TO AMEND CERTAIN LAWS PERTAINING TO AUCTIONS AND AUCTIONEERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85B-1 is amended by adding the following new subdivisions to read:

"§ **85B-1. Definitions.**

For the purposes of this Chapter the following definitions shall apply:

…

(8) 'Auctioneering', 'conduct of auction', or 'conduct of business' means, in addition to the actual calling of bids, any of the following:

a. Contracting for auction.

b. Accepting consignments of items for sale at auction.

c. Advertising an auction.

d. Offering items for sale at auction.

e. Accepting payment or disbursing monies for items sold at auction.

f. Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.

(9) 'Consignment' means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.

(10) 'Designated person' means any person approved by the Board to have the authority to transact business for a licensed auction firm."

SECTION 2. G.S. 85B-2(b) reads as rewritten:

"(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for ~~compensation.~~compensation or any person who or entity that accepts consignments to be sold at auction where the consignor receives any proceeds from the sale."

SECTION 3. G.S. 85B-2 is amended by adding the following new subsection to read:

"(c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer."

SECTION 4. G.S. 85B-4(d) reads as rewritten:

"(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics

applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in ~~Raleigh,~~North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure."

SECTION 5. G.S. 85B-7 reads as rewritten:

"§ **85B-7. Conduct of auction; records.**

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain ~~accounting~~ consignment records and enter in them, upon receipt of goods for auction and before ~~their~~ sale, the name and address of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. ~~The accounting~~Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain ~~records~~ sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records

shall be open for inspection by the Commission or its designated agent at reasonable times."

SECTION 6. G.S. 85B-7.1(a) reads as rewritten:

"(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. ~~A licensee who disburses funds on auction day shall prepare a receipt or settlement statement for the disbursed funds that contains the name and address of the person receiving the disbursement and the amount of the disbursement. The receipt or statement shall be signed by the licensee and the person receiving the disbursement.~~At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee's agent and by the person receiving the disbursement."

SECTION 7. G.S. 85B-8(e) reads as rewritten:

"(e) The Commission may investigate complaints and conduct hearings as follows:

(1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:26 a.m. on the 26th day of August, 2005.

H.B. 1266 **Session Law 2005-331**

AN ACT TO INCREASE THE AMOUNT THE DEPARTMENT OF TRANSPORTATION WILL PAY AS RELOCATION ASSISTANCE FOR REASONABLE EXPENSES FOR SEARCHING FOR A REPLACEMENT BUSINESS OR FARM, AS REQUIRED BY FEDERAL REGULATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-8(a) reads as rewritten:

"(a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person, such agency shall make a payment to any displaced person, upon application as approved by the head of the agency for:

(1) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the relocation officer; and

(3) Actual reasonable expenses in searching for a replacement business or farm in accordance with criteria established by the lead agency, but not to exceed ~~one thousand dollars ($1,000);~~ two thousand five hundred dollars ($2,500); and

(4) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria to be established by the lead agency, but not to exceed ten thousand dollars ($10,000)."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:27 a.m. on the 26th day of August, 2005.

S.B. 856 **Session Law 2005-332**

AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO TRIAL PREPARATION MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.9. Trial preparation materials.**

(a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that

was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That Are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

(1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding."

SECTION 2. G.S. 132-9 reads as rewritten:

"§ **132-9. Access to records.**

…

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court ~~may, in its discretion,~~ shall allow the prevailing party to recover its reasonable attorneys' fees ~~if:~~if attributed to those public records, unless the court finds

~~(1)~~ ~~The court finds that~~ the agency acted ~~without~~ with substantial justification in denying access to the public ~~records; and~~records or

~~(2)~~ ~~The~~ the court finds ~~that there are no special~~ circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court ~~may, in its discretion,~~shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 3. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:31 a.m. on the 26th day of August, 2005.

H.B. 1394 **Session Law 2005-333**

AN ACT TO ALLOW THE PARENTS OF AN INCOMPETENT ADULT WHO IS NOT MARRIED TO RECOMMEND A GUARDIAN FOR THAT ADULT BY WILL OR OTHER DOCUMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 35A is amended by adding a new section to read:

"§ **35A-1212.1. Recommendation of appointment of guardian by will or other writing.**

Any parent may by will recommend appointment of a guardian for an unmarried child who has been adjudicated an incompetent person and specify desired limitations on the powers to be given to the guardian. If both parents make such recommendations, the will with the latest date shall, in the absence of other relevant factors, prevail. Such recommendation shall be a strong guide for the clerk in appointing a guardian, but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the incompetent adult's best interest. If the will specifically so directs, a guardian appointed pursuant to such recommendation may be permitted to qualify and serve without giving bond, unless the clerk finds as a fact that the interest of the incompetent adult would be best served by requiring the guardian to give bond."

SECTION 2. G.S. 35A-1214 reads as rewritten:

"§ **35A-1214. Priorities for appointment.**

The clerk shall consider appointing a guardian according to the following order of priority: an individual recommended under G.S. 35A-1212.1; an individual; a corporation; or a disinterested public agent. No public agent shall be appointed guardian until diligent efforts have been made to find an appropriate individual or corporation to serve as guardian, but in every instance the clerk shall base the appointment of a guardian or guardians on the best interest of the ward."

SECTION 3. G.S. 35A-1230 reads as rewritten:

"§ **35A-1230. Bond required before receiving property.**

Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no general guardian or guardian of the estate shall be permitted to receive the ward's property until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court, provided that if the guardian is a nonresident of this State and the value of the property received exceeds one thousand dollars ($1,000) the surety shall be a bond under G.S. 35A-1231(a) executed by a duly authorized surety company, or secured by cash in an amount equal to the amount of the bond or by a mortgage executed under Chapter 109 of the General Statutes on real estate located in the county, the value of which, excluding all prior liens and encumbrances, shall be at least one and one-fourth times the amount of the bond; and further provided that the nonresident shall appoint a resident agent to accept service of process in all actions and proceedings with respect to the guardianship. The clerk shall not require a guardian of the person who is a resident of North Carolina to post a bond; the clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:41 a.m. on the 26th day of August, 2005.

H.B. 1485 **Session Law 2005-334**

AN ACT TO PROVIDE THAT SEARCH WARRANTS MAY BE OBTAINED BY AUDIO/VIDEO TRANSMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-245(a) reads as rewritten:

"(a) Before acting on the application, the issuing official may examine on oath the applicant or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the issuing official in determining whether probable cause exists for the issuance of the warrant unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official. The information must be shown by one or more of the following:

(1) Affidavit; or

(2) Oral testimony under oath or affirmation before the issuing official; or

(3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 11:59 a.m. on the 26th day of August, 2005.

H.B. 1390 **Session Law 2005-335**

AN ACT TO MAKE THE LAW GOVERNING THE COMMERCIAL TRANSPORTATION OF ALCOHOLIC BEVERAGES CONSISTENT WITH THE LAW GOVERNING THE AMOUNTS OF ALCOHOLIC BEVERAGES THAT MAY BE PURCHASED WITHOUT A PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1115(a) reads as rewritten:

"(a) Permit Required. – Unless a person holds a permit which otherwise allows him to transport more than 80 liters of malt beverages other than draft malt beverages in kegs, ~~20~~ 50 liters of unfortified wine, or eight liters of fortified wine or spirituous liquor, or is a retailer authorized to transport alcoholic beverages under G.S. 18B-405, each person transporting alcoholic beverages in excess of those quantities shall have the permit described in this section."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:05 p.m. on the 26th day of August, 2005.

H.B. 1416 **Session Law 2005-336**

AN ACT TO MAKE TOWNS OR CITIES WHERE A RAILROAD PASSENGER TERMINUS EXISTS ELIGIBLE TO HOLD MALT BEVERAGE PERMIT ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-600 is amended by adding a new subsection to read:

"(h) Railroad Passenger Terminus Location Elections. – Notwithstanding any other provision of this section, any city or town that is the passenger terminus of a rail line that carries at least 60,000 passengers annually may hold an election authorized by subdivisions (a)(1) and (a)(2) of this section. Any election held under this subsection shall be for the on-premises sale of malt beverages and the on-premises sale of unfortified wine pursuant to G.S. 18B-602(a)(2) and G.S. 18B-602(d)(2)."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:05 p.m. on the 26th day of August, 2005.

H.B. 1401 **Session Law 2005-337**

AN ACT TO AMEND THE CIRCUMSTANCES UNDER WHICH FEDERAL LAW ENFORCEMENT OFFICERS AND SWORN LAW ENFORCEMENT OFFICERS MAY CARRY CONCEALED WEAPONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United ~~States while in the discharge of their official duties;~~States;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, ~~if:~~provided that an officer does not carry a concealed weapon while consuming alcohol or

an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

~~a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and~~

~~b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.~~"

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:09 p.m. on the 26th day of August, 2005.

H.B. 1411 **Session Law 2005-338**

AN ACT TO UPDATE THE CAP FOR THE AMOUNT FINANCED THAT FALLS WITHIN THE MEANING OF A CONSUMER CREDIT SALE IN ORDER TO REFLECT THE INCREASE IN THE COST OF CONSUMER GOODS AND SERVICES DUE TO INFLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25A-1 reads as rewritten:

"§ **25A-1. Scope of act.**

This Chapter applies only to consumer credit sales as hereinafter defined, except that G.S. 25A-37, referral sales, applies to all sales of goods or services as provided therein. This Chapter does not apply to a bona fide direct loan transaction in which a lender makes a direct loan to a borrower, and such lender is not regularly engaged, directly or indirectly, in the sale of goods or the furnishing of services as defined in this Chapter.

Except for G.S. 25A-37, referral sales, ~~and~~ those sales defined in G.S. 25A-2(b), and those sales with amounts financed in excess of twenty-five thousand dollars ($25,000) under G.S. 25A-2(a)(5), this Chapter does not apply to any party or transaction that is not also subject to the provisions of the Consumer Credit Protection Act (Federal Truth-in-Lending Act)."

SECTION 2. G.S. 25A-2(a) reads as rewritten:

"§ **25A-2. 'Consumer credit sale' defined.**

(a) Except as provided in subsection (c) of this section, a "consumer credit sale" is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand dollars ($75,000) or, in the case of a

debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed."

SECTION 3. This act becomes effective October 1, 2005, and applies to sales that occur on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 12:32 p.m. on the 26th day of August, 2005.

H.B. 1145 **Session Law 2005-339**

AN ACT TO PROVIDE THAT PROBATION IS STAYED DURING AN APPEAL FOR A TRIAL DE NOVO FROM A JUDGMENT ENTERED BY A MAGISTRATE OR DISTRICT COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1431 reads as rewritten:

"§ **15A-1431. Appeals by defendants from magistrate and district court judge; trial de novo.**

(a) A defendant convicted before a magistrate may appeal for trial de novo before a district court judge without a jury.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant to a plea arrangement between the State and the defendant, the jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be the same as was had by the district court prior to the plea arrangement.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.

(d) A defendant convicted by a magistrate or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the magistrate or judge who heard the case or, if he is not available, notice must be given:

(1) Before a magistrate in the county, in the case of appeals from the magistrate; or

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The magistrate or district court judge must review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, clerk or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

~~(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to~~

~~confinement when the defendant has complied with conditions of pretrial release. If the defendant cannot comply with conditions of pretrial release, the judge may order confinement in a local confinement facility pending the trial de novo in superior court.~~

(f1) Appeal pursuant to this section stays the execution of all portions of the judgment, including all of the following:

(1) Payment of costs.

(2) Payment of a fine.

(3) Probation or special probation.

(4) Active punishment.

Pursuant to subsection (e) of this section, however, the judge may order any appropriate condition of pretrial release, including confinement in a local confinement facility, pending the trial de novo in superior court.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

(h) The defendant may withdraw his appeal after the calendaring of the case for trial de novo only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

SECTION 2. This act is effective when it becomes law and applies to appeals noticed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 1:05 p.m. on the 26th day of August, 2005.

H.B. 1389 **Session Law 2005-340**

AN ACT TO AMEND THE LAW GOVERNING WINE DISTRIBUTION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1200 reads as rewritten:

"§ **18B-1200. Construction; findings and ~~purpose.~~purpose; exceptions.**

(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

(1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

(2) To protect wine wholesalers against unfair treatment by wineries;

(3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all wine wholesalerships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207."

SECTION 2. This act is effective when it becomes law. This act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 1:21 p.m. on the 26th day of August, 2005.

H.B. 1279 **Session Law 2005-341**

AN ACT TO AMEND THE SPEEDING TO ELUDE ARREST STATUTES TO CLARIFY THE PROXIMATE CAUSE REQUIREMENT WHEN THE OFFENSE RESULTS IN DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 reads as rewritten:

"§ **20-141.5. Speeding to elude arrest.**

(a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.

(2) Gross impairment of the person's faculties while driving due to:

a. Consumption of an impairing substance; or

b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.

(3) Reckless driving as proscribed by G.S. 20-140.

(4) Negligent driving leading to an accident causing:

a. Property damage in excess of one thousand dollars ($1,000); or

b. Personal injury.

(5) Driving when the person's drivers license is revoked.

(6) Driving in excess of the posted speed limit, during the days and hours when the posted limit is in effect, on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).

(7) Passing a stopped school bus as proscribed by G.S. 20-217.

(8) Driving with a child under 12 years of age in the vehicle.

(c) When a violation of subsection (a) of this section is the proximate cause of the death of any person, the person violating subsection (a) of this section shall be guilty

of a Class H felony. When a violation of subsection (b) of this section is the proximate cause of the death of any person, the person violating subsection (b) of this section shall be guilty of a Class E felony.

~~(c)~~(d) Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

~~(d)~~(e) The Division shall suspend, for up to one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for two years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of two of the aggravating factors listed in subsection (b) of this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of three or more aggravating factors listed in subsection (b) of this section. In the case of a first felony conviction under this section where only two aggravating factors were present, the licensee may apply to the sentencing court for a limited driving privilege after a period of 12 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

~~(e)~~(f) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection ~~(c)~~(d) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process.

~~(f)~~(g) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 3:00 p.m. on the 26th day of August, 2005.

H.B. 1030 **Session Law 2005-342**

AN ACT TO CLARIFY THE POWERS OF THE BRUNSWICK AIRPORT COMMISSION AND TO AUTHORIZE LOCAL AIRPORT AUTHORITIES TO BORROW MONEY.

The General Assembly of North Carolina enacts:

SECTION 1. In addition to all other powers authorized by law, the Brunswick County Airport Commission shall have the following powers:

(1) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Commission, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Brunswick County Board of County Commissioners.

(2) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(3) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; and to lease these improvements and facilities for a term or terms not to exceed 20 years.

SECTION 2. The Brunswick County Airport Commission shall be exempt from any beach renourishment fees imposed by the Town of Oak Island.

SECTION 3. The Brunswick County Airport Commission is considered to be an airport authority for the purpose of any general law pertaining to airport authorities.

SECTION 4. Subchapter IV of Chapter 159 of the General Statutes is amended by adding a new article to read:

"Article 14.

"Borrowing by Airport Authorities.

"**§ 159-201. Borrowing authority.**

Whenever an airport authority is authorized by general or local act to erect and construct improvements and facilities and to lease these improvements and facilities, the authority may borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans. The airport authority's power to borrow money under this section is subject to the approval of the Commission. To the extent this section conflicts with any local act, then this section shall control."

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

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 10:51 a.m. on the 27th day of August, 2005.

H.B. 1311 **Session Law 2005-343**

AN ACT ALLOWING DOMESTIC VIOLENCE VICTIMS TO APPLY FOR A TEMPORARY CONCEALED HANDGUN PERMIT UPON SHOWING PROOF OF A PROTECTIVE ORDER ISSUED UNDER CHAPTER 50B OF THE GENERAL STATUTES AS EVIDENCE OF AN EMERGENCY SITUATION IN ORDER TO EMPOWER DOMESTIC VIOLENCE VICTIMS TO PROTECT THEMSELVES AND THEIR FAMILIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.15(b) reads as rewritten:

"(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13(a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed 90 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing."

SECTION 2. G.S. 50B-3 is amended by adding the following new subsection to read:

"(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that explains the plaintiff's right to apply for a permit under G.S. 14-415.15."

SECTION 3. The Administrative Office of the Courts shall develop a standard informational sheet for plaintiffs issued protective orders under Chapter 50B of the General Statutes that explains the plaintiffs' right to apply for a permit under G.S. 14-415.15.

SECTION 4. This act becomes effective October 1, 2005, and applies to protective orders issued on or after that date.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

Became law upon approval of the Governor at 3:33 p.m. on the 27th day of August, 2005.

H.B. 1023 **Session Law 2005-344**

AN ACT TO ESTABLISH A STATE LOTTERY TO SUPPORT SCHOOL CONSTRUCTION, TO FUND COLLEGE AND UNIVERSITY SCHOLARSHIPS, AND TO GENERATE FUNDS TO FURTHER THE GOAL OF PROVIDING ENHANCED EDUCATIONAL OPPORTUNITIES SO THAT ALL STUDENTS IN THE PUBLIC SCHOOLS CAN ACHIEVE THEIR FULL POTENTIAL, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON THE LOTTERY.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 18C.**
"**North Carolina State Lottery.**
"Article 1.
"General Provisions and Definitions.

"**§ 18C-101. Citation.**

This Chapter shall be known and may be cited as the North Carolina State Lottery Act.

"**§ 18C-102. Purpose and intent.**

The General Assembly declares that the purpose of this Chapter is to establish a State-operated lottery to generate funds for the public purposes described in this Chapter. The net revenues generated by the lottery shall not supplant revenues already expended or projected to be expended for those public purposes, and lottery net revenues shall supplement rather than be used as substitute funds for the total amount of money allocated for those public purposes.

"**§ 18C-103. Definitions.**

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

(1) 'Commission' means the North Carolina State Lottery Commission.
(2) 'Commissioner' means a member of the Commission.
(3) 'Director' means the person selected by the Commission to be the chief administrator of the North Carolina State Lottery.
(4) 'Game' or 'lottery game' means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those prizes.
(5) 'Lottery' means any lottery game or series of games established and operated pursuant to this Chapter.
(6) 'Lottery contractor' means a person other than a lottery retailer with whom the Commission has contracted for the purpose of providing goods or services to the Commission.
(7) 'Person' means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.
(8) 'Retailer', 'lottery retailer', or 'lottery game retailer' means a person with whom the Commission has contracted to sell tickets or shares in lottery games.
(9) 'Share' means any method of participation in a lottery game, other than by a ticket purchased on an equivalent basis with a ticket.
(10) 'Ticket' means any tangible evidence authorized by the Commission to demonstrate participation in a lottery game.
(11) 'Vendor' or 'lottery vendor' means any person who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission.

"**§§ 18C-104 through 18C-109: Reserved for future codification purposes.**

"Article 2.
"North Carolina State Lottery Commission.

"**§ 18C-110. Establishment of the North Carolina State Lottery Commission to be a self-supporting agency of the State.**

There is created the North Carolina State Lottery Commission to establish and oversee the operation of a Lottery. The Commission shall be located in the Department

of Commerce for budgetary purposes only; otherwise, the Commission shall be an independent, self-supporting, and revenue-raising agency of the State. The Commission shall reimburse other governmental entities that provide services to the Commission.

"**§ 18C-111. Commission membership; appointment; selection of chair; vacancies; removal; meetings; compensation.**

(a) The Commission shall consist of nine members, three of whom shall be appointed by the Governor, three of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The Governor shall select the initial chair of the Commission from among its membership, who shall serve as chair for one year from the date of appointment. Thereafter, the Commission shall select a chair from among its membership to serve at the pleasure of the Commission.

(b) Of the initial appointees of the Governor, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. All succeeding appointments shall be for terms of five years. Members shall not serve for more than two successive terms.

(c) Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.

(d) The Commission shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

(e) Members of the Commission shall receive per diem, subsistence, and travel as provided in G.S. 138-5 and G.S. 138-6.

"**§ 18C-112. Qualifications of Commissioners.**

(a) Of the members of the Commission appointed by the Governor, at least one member shall have a minimum of five years' experience in law enforcement, and no more than two members shall be from the same political party as the Governor.

(b) Of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall be a certified public accountant, and no more than two members shall be from the same political party as the President Pro Tempore of the Senate.

(c) Of the members of the Commission appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall have retail sales experience, and no more than two members shall be from the same political party as the Speaker of the House of Representatives.

(d) In making appointments to the Commission, the appointing authorities shall consider the composition of the State with regard to gender, ethnic, racial, and age composition.

"**§ 18C-113. Meetings; records.**

(a) Meetings of the Commission shall be subject to Article 33C of Chapter 143 of the General Statutes.

(b) Except as provided in this Article, records of the Commission shall be open and available to the public in accordance with Chapter 132 of the General Statutes.

(c) Personnel records of the Commission are subject to Article 7 of Chapter 126 of the General Statutes.

"§ **18C-114. Powers and duties of the Commission.**

(a) The Commission shall have the following powers and duties:

(1) To specify the types of lottery games and gaming technology to be used in the Lottery.

(2) To prescribe the nature of lottery advertising.

(3) To specify the number and value of prizes for winning tickets or shares in lottery games, including cash prizes, merchandise prizes, prizes consisting of deferred payments or annuities, and prizes of tickets or shares in the same lottery game or other lottery games.

(4) To specify the rules of lottery games and the method for determining winners of lottery games.

(5) To specify the retail sales price for tickets or shares for lottery games.

(6) To establish a system to claim prizes, including determining the time periods within which prizes must be claimed, to verify the validity of tickets or shares claimed to win prizes, and to effect payment of those prizes.

(7) To conduct a background investigation, including a criminal history record check, of applicants for the position of Director, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.

(8) To determine the salary of the Director and the terms and conditions for employment contracts for the Director.

(9) To specify the manner of distribution, dissemination, or sale of lottery tickets or shares to lottery game retailers or directly to the public.

(10) To determine the incentives, if any, for any lottery employees, lottery vendors, lottery contractors, or electronic computer terminal operators.

(11) To approve and authorize the Director to enter into contracts with lottery game retailers upon terms and conditions as specified by the Commission.

(12) To approve and authorize the Director to enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter.

(13) Any other powers necessary for the Commission to carry out its responsibilities under this Chapter.

(b) The Commission may adopt rules to carry out its duties and responsibilities under this Chapter.

"§ **18C-115. Reports.**

The Commission shall send quarterly and annual reports on the operations of the Commission to the Governor, State Treasurer, and to the General Assembly. The reports shall include complete statements of lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds, including the occurrence of any audit.

"§ **18C-116. Audits.**

The State Auditor shall conduct annual audits of all accounts and transactions of the Commission and any other special postaudits the State Auditor considers to be necessary.

"§§ **18C-117 through 18C-119: Reserved for future codification purposes.**

"Article 3.

"North Carolina State Lottery Director.

"§ **18C-120. Selection of the Director; powers and duties.**

(a) The Commission shall select a Director to operate and administer the Lottery and to serve as the Secretary of the Commission. Except as to the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, the Director shall be exempt from the State Personnel Act.

(b) The Director shall have the following powers and duties, under the supervision of the Commission:

(1) To provide for the reporting of payment of lottery game prizes to State and federal tax authorities and for the withholding of State and federal income taxes from lottery game prizes as provided in State and federal law.

(2) To conduct a background investigation, including a criminal history record check, of applicants for employment with the Commission, lottery retailers, and lottery contractors, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.

(3) To set the salaries of all Commission employees, subject to the approval of the Commission, and to employ all personnel of the Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.

(4) To enter into contracts with lottery retailers and lottery contractors upon approval by the Commission.

(5) To provide for the security and accuracy in the operation and administration of the Commission and the Lottery, including examining the background of all prospective employees, lottery vendors, lottery contractors, and lottery retailers.

(6) To receive reports of alleged violations of the law relating to the operation of the Lottery and report those violations to the appropriate law enforcement authority.

(7) To confer with the Commission on the operation and administration of the Lottery and make available for inspection by the Commission all books, records, files, documents, and other information of the Lottery.

(8) To study the operation and administration of other lotteries and to collect demographic and other information concerning the Lottery and make recommendations to improve the operation and administration of the Lottery to the Commission, to the Governor, and to the General Assembly.

(9) To provide monthly financial reports to the Commission of all lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds.

(10) To enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter and upon the approval of the Commission.

"§ **18C-121. Accountability; books and records.**

The Director shall make and keep books and records that accurately and completely reflect each day's transactions, including the distribution of tickets or shares to lottery

game retailers, receipt of funds, prize claims, prizes paid directly by the Commission, expenses, and all other financial transactions involving lottery funds necessary to permit preparation of financial statements that conform with generally accepted accounting principles.

"§ **18C-122. Independent audits.**

(a) At the beginning of each calendar year, the Director shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

(b) The portion of the security audit report containing the overall evaluation of the Commission and of lottery games in terms of each aspect of security shall be presented to the Commission, to the Governor, and to the General Assembly.

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, the Director shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly.

"**§§ 18C-123 through 18C-129: Reserved for future codification purposes.**

"Article 4.

"Operation of Lottery.

"§ **18C-130. Types of lottery games; lottery games and lottery advertising; certain disclosures and information to be provided.**

(a) The Commission shall determine the type of lottery games that may be used in the Lottery. Games may include instant lotteries, online games, games played on computer terminals or other devices, and other games traditional to a lottery or that have been conducted by any other state government-operated lottery.

(b) In lottery games using tickets, each ticket in a particular game shall have printed on it a unique number distinguishing it from every other ticket in that lottery game and an abbreviated form of the game-play rules. In lottery games using tickets with preprinted winners, the overall estimated odds of winning prizes shall be printed on each ticket. No name or photograph of a current or former elected official shall appear on the tickets of any lottery game.

(c) In games using electronic computer terminals or other devices to play lottery games, no coins or currency shall be dispensed to players from those electronic computer terminals or devices.

(d) No games shall be based on the outcome of a particular sporting event or on the results of a series of sporting events.

(e) The only advertising of the Lottery that shall be permitted is point-of-sale advertising and advertising on the premises of lottery retailers. Lottery advertising shall be designed and presented in a manner to minimize the appeal of lottery games to minors. The use of cartoon characters or of false, misleading, or deceptive information

in lottery advertising is prohibited. All advertising promoting the sale of lottery tickets or shares for a particular game shall include the actual or estimated overall odds of winning the game.

(f) The Commission shall make available a detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery game or the estimated odds of winning these prizes at the time that lottery game is offered for sale to the public.

(g) The Commission shall, in consultation with the Department of Health and Human Services, develop and provide information to the public about gambling addiction and treatment.

"**§ 18C-131. Sales and sale price of tickets and shares; sales to minors prohibited.**

(a) The Commission may sell tickets and shares directly to the public, contract with lottery game retailers to sell tickets and shares, or distribute tickets or shares through any other method authorized by the Commission.

(b) No ticket or share in a lottery game shall be sold or resold for more than the retail sales price established by the Commission.

(c) The minimum retail price of each ticket or share in any lottery game shall be fifty cents (50¢). The minimum retail price shall not apply to any discounts or promotions authorized by the Commission for a particular lottery game.

(d) It shall be unlawful for a person to sell a lottery ticket or share to a person under the age of 18 years. No person under the age of 18 years shall purchase a lottery ticket or share. A person who violates this subsection shall be guilty of a Class 1 misdemeanor.

(e) It shall be a defense for the person who sold a ticket or share in violation of subsection (d) of this section if the person does either of the following:

(1) Shows that the purchaser produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the purchaser to be at least 18 years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least 18 years old.

"**§ 18C-132. Procedures for drawings and claiming prizes; payment of prizes; protection of information concerning certain prize winners.**

(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a drawing among entries, or a drawing among finalists, all of the following conditions shall be met:

(1) The drawings shall be open to the public.

(2) The drawings shall be witnessed by an independent certified public accountant.

(3) Any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the Commission both before and after the drawings.

(4) Audio and visual records of the drawings and inspections shall be made.

(b) If a valid claim is not made for a prize within the applicable period, the unclaimed prize money may be used to increase prize payments for future games or may be used for other purposes consistent with this Chapter. Prizes that remain unclaimed

after the period set by the Commission for claiming the prizes shall not be considered abandoned property.

(c) After the expiration of the claim period for prizes for each lottery game, the Commission shall make available a detailed tabulation of the total number of prizes of each prize denomination that was actually claimed and paid directly by the Commission.

(d) No prize shall be paid for a lottery ticket or share that is stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or recorded by the Commission by the applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with any additional specific rules and public or confidential validation and security tests appropriate to the particular game involved.

(e) No particular prize in any lottery game shall be paid more than once. The Director, Commission, and the State shall be discharged of all liability upon payment of a prize.

(f) Winners of less than six hundred dollars ($600.00) shall be permitted to claim prizes from any of the following:

(1) The same lottery game retailer who sold the winning ticket or share.

(2) From any other lottery retailer.

(3) Directly from the Commission.

(g) Winners of six hundred dollars ($600.00) or more shall claim prizes directly from the Commission.

(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid to the estate of a deceased prizewinner or to a person designated pursuant to a court order.

(i) No ticket or share in a lottery game shall be purchased by, and no prize shall be paid to, a member of the Commission, the Director, or employee of the Commission, or to any spouse, parent, or child living in the same household as a person disqualified by this subsection.

(j) No prize shall be paid to a person under the age of 18.

(k) If a prize winner submits to the Commission a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with that prize winner or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, that prize winner's identifying information shall be treated as confidential information under G.S. 132-1.2 as long as the protective order remains in effect or the prize winner remains a certified program participant in the Address Confidentiality Program. That prize winner's identifying information shall be available for inspection by a law enforcement agency or by a person identified in a court order if inspection of the address by that person is directed by that court order.

"§ **18C-133. Lottery game-play rules and winner validation procedures.**

(a) By purchasing a ticket or share in a lottery game, a player agrees to abide by, and be bound by, the game-play rules adopted by the Commission that apply to any particular lottery game involved.

(b) All players acknowledge that the determination of whether the player is a winner is subject to the game-play rules and the winner validation procedures and confidential validation tests established by the Commission for the particular lottery game involved.

"§ **18C-134. Prize winners with outstanding debts to State agencies, delinquent taxes, or past-due child support; offset.**

(a) Before paying a prize of six hundred dollars ($600.00) or more to a person who claims to have won the prize, the Commission shall submit the name of that person to the Department of Revenue. The Department of Revenue shall, within 10 days after receiving the name of the person, identify whether that person owes a debt to a State agency as provided in the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall notify the Commission of the amount of the prize subject to debt set-off. The Commission shall remit the amount identified by the Department of Revenue to the Department, and shall pay any remaining funds from the prize to the prizewinner.

(b) Except as provided in this section, the provisions of Chapter 105A of the General Statutes apply to the funds identified by the Department of Revenue and remitted by the Commission to the Department.

"§§ **18C-135 through 18C-139: Reserved for future codification purposes.**

"Article 5.

"Lottery Game Retailers.

"§ **18C-140. Contracting with lottery game retailers.**

The Commission may contract with lottery game retailers to sell tickets or shares for lottery games upon such terms and conditions as it considers appropriate. No contract to act as a lottery game retailer is assignable or transferable. All contracts with lottery game retailers shall provide that the Director may terminate the contract if the lottery game retailer knowingly violates a provision of this Chapter.

"§ **18C-141. Selection of lottery game retailers.**

(a) The Director shall recommend to the Commission those persons with whom to contract as lottery game retailers. To the extent practicable, the Director shall meet the minority participation goals under Article 8 of Chapter 143 of the General Statutes.

(b) The Director may not recommend contracting with any of the following:

(1) A natural person under 21 years of age. This minimum age shall not prohibit employees of a lottery game retailer who are under 21 years of age from selling lottery tickets or shares during their employment.

(2) A person who would be engaged exclusively in the business of selling lottery tickets or shares or operating electronic computer terminals or other devices solely for entertainment.

(c) Upon approval of the Commission, the Director shall enter into a contract with the person to sell tickets or shares upon such terms and conditions as the Commission directs.

"§ **18C-142. Compensation for lottery game retailers.**

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be six percent (6%) of the retail price of the tickets or shares sold for each lottery game. The Commission shall authorize an incentive bonus of up to one percent (1%) of the retail price of the tickets or shares sold based on submission of reports and remission of lottery revenues to the Commission on a timely basis.

"§ **18C-143. Responsibilities of lottery game retailers.**

(a) A lottery game retailer shall comply with all provisions of this Article and the contract with the Commission.

(b) A lottery game retailer shall sell no lottery tickets or shares unless the retailer conspicuously displays a certificate of authority, signed by the Director, to sell lottery tickets or shares.

(c) A lottery game retailer shall furnish an appropriate bond or letter of credit, if so requested by the Director. The Commission may authorize the Director to purchase blanket bonds covering the activities of any or all lottery game retailers.

(d) The Commission shall adopt rules to establish procedures governing how the lottery game retailers:

(1) Account for all tickets or shares in their custody, including tickets and shares sold.

(2) Account for the money collected from the sale of tickets and shares.

(3) Remit funds to the Commission, provided that all payments shall be in the form of electronic fund transfers or other recorded financial instruments as authorized by the Commission and approved by the Director.

"**§§ 18C-144 through 18C-149: Reserved for future codification purposes.**

"Article 6.

"Lottery Vendors and Lottery Contractors.

"**§ 18C-150. Procurements.**

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission.

"**§ 18C-151. Contracts.**

(a) Article 8 of Chapter 143 of the General Statutes shall apply to all contracts entered into by the Commission, including the provisions relating to minority participation goals, and the Commission shall be considered a political subdivision of the State for those purposes of contracting under Article 8 of Chapter 143 of the General Statutes. Contracts for the provision of services to the Commission shall be treated as a contract for the purchase of apparatus, supplies, materials, or equipment. The bonding requirements of G.S. 143-129(b) for construction contracts shall apply to all contracts of the Commission and may be waived at the discretion of the Commission.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor with whom the Commission has previously contracted for the same purposes.

(c) Before a contract required to be let under G.S. 143-129 is awarded, the Director shall conduct an investigation of all of the following:

(1) The vendor to whom the contract is to be awarded.

(2) Any parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(3) All shareholders with a five percent (5%) or more interest in the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(4) All officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

"**§ 18C-152. Investigation of lottery vendors.**

(a) Lottery vendors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures by lottery vendors to ensure that the vendors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery vendors.

(c) All documents compiled by the Director in conducting the investigation of the lottery vendors shall be held as confidential information under Chapter 132.

"**§§ 18C-153 through 18C-159: Reserved for future codification purposes.**

"Article 7.

"North Carolina State Lottery Fund.

"**§ 18C-160. North Carolina State Lottery Fund.**

An enterprise fund, to be known as the North Carolina State Lottery Fund, is created within the State treasury. The North Carolina State Lottery Fund is appropriated to the Commission and may be expended without further action of the General Assembly for the purposes of operating the Commission and the lottery games.

"**§ 18C-161. Types of income to the North Carolina State Lottery Fund.**

The following revenues shall be deposited in the North Carolina State Lottery Fund:

(1) All proceeds from the sale of lottery tickets or shares.

(2) The funds for initial start-up costs provided by the State.

(3) All other funds credited or appropriated to the Commission from any source.

(4) Interest earned by the North Carolina State Lottery Fund.

"**§ 18C-162. Allocation of revenues.**

(a) To the extent practicable, the Commission shall allocate revenues to the North Carolina State Lottery Fund in the following manner:

(1) At least fifty percent (50%) of the total annual revenues, as described in this Chapter, shall be returned to the public in the form of prizes.

(2) At least thirty-four percent (34%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.

(3) No more than sixteen percent (16%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery.

(b) Unclaimed prize money held by the Commission in the North Carolina State Lottery Fund may be used by the Commission to enhance prizes in other lottery games.

(c) To the extent that the expenses of the Commission are less than sixteen percent (16%) of total annual revenues, the Commission may allocate any surplus funds:

(1) To increase prize payments; or

(2) To the benefit of the public purposes as described in this Chapter.

"**§ 18C-163. Expenses of the Lottery.**

Expenses of the Lottery may include any of the following:

(1) The costs incurred in operating and administering the Commission, including initial start-up costs.

(2) The costs resulting from any contracts entered into for the purchase or lease of goods or services required by the Commission.

(3) The compensation paid to lottery game retailers.

(4) The costs of supplies, materials, tickets, independent studies and audits, data transmission, advertising, promotion, incentives, public

relations, communications, bonding for lottery game retailers, printing, and distribution of tickets and shares.

(5) The costs of reimbursing other governmental entities for services provided to the Commission.

(6) The costs for any other goods and services needed to accomplish the purposes of this Chapter.

"**§ 18C-164. Transfer of net revenues.**

(a) The funds remaining in the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund.

(b) On June 30 of each year, the Commission shall distribute the net revenue of the North Carolina State Lottery Fund as follows:

(1) Fifty percent (50%) shall be transferred to the Public School Building Capital Fund created in Article 38A of Chapter 115C of the General Statutes and is appropriated for expenditure in accordance with that Article. It is the purpose of this subdivision for counties to appropriate funds generated under this subdivision to increase the level of county spending for public school capital outlay purposes other than the retirement of indebtedness. A county must continue to spend for public school capital outlay purposes the same amount of money it would have spent for those purposes if it had not received the monies appropriated under this subdivision.

(2) Twenty-five percent (25%) shall be transferred to the State Educational Assistance Authority and is appropriated to fund scholarships pursuant to Article 35A of Chapter 115C of the General Statutes.

(3) Twenty-five percent (25%) shall be transferred to a special revenue fund to be established in the State treasury and to be known as the Education Enhancement Fund. This fund shall be subject to appropriation by the General Assembly and shall be used to further the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential.

"**§§ 18C-165 through 18C-169: Reserved for future codification purposes.**

"Article 8.

"Miscellaneous.

"**§ 18C-170. Preemption of local regulation.**

A county or municipality shall not enact any local law, ordinance, or regulation relating to the Lottery, and this Chapter preempts all existing county or municipal laws, ordinances, or regulations that would impose additional restrictions or requirements in the operation of the Lottery. To the extent that this Chapter conflicts with any local act, this Chapter prevails to the extent of the conflict.

"**§ 18C-171. Lawful activity.**

Other than this Chapter, any other State or local law, ordinance, or regulation providing any penalty, disability, restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this Chapter.

"**§§ 18C-172 through 18C-179: Reserved for future codification purposes.**

SECTION 2. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 35A.
"College Scholarships.

"**§ 115C-499.1. Definitions.**

The following definitions apply to this Article:

(1) Academic year. – A period of time in which a student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) Authority. – The State Education Assistance Authority created by Article 23 of Chapter 116 of the General Statutes.

(3) Eligible postsecondary institution. – A school that is:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

b. A community college as defined in G.S. 115D-2(2); or

c. A nonpublic postsecondary institution as defined in G.S. 116-22(1) or 116-43.5(a)(1).

(4) Matriculated status. – Being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at an eligible postsecondary institution.

(5) Scholarship. – A scholarship for education awarded under this Article.

(6) Title IV. – Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070, et seq.

"**§ 115C-499.2. Eligibility requirements for a scholarship.**

In order to be eligible to receive a scholarship under this Article, a student seeking a degree, diploma, or certificate at an eligible postsecondary institution must meet all of the following requirements:

(1) Only needy North Carolina students are eligible to receive scholarships. For purposes of this subsection, "needy North Carolina students" are those eligible students whose expected family contribution under the federal methodology does not exceed five thousand dollars ($5,000).

(2) The student must meet all other eligibility requirements for the federal Pell Grant, with the exception of the expected family contribution.

(3) The student must qualify as a legal resident of North Carolina and as a resident for tuition purposes in accordance with definitions of residency that may from time to time be adopted by the Board of Governors and published in the residency manual of the Board of Governors.

(4) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status at an eligible postsecondary institution.

(5) In order to continue to be eligible for a scholarship for the student's second and subsequent academic years, the student must meet achievement standards by maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible postsecondary institution in which the student is enrolled.

(6) A student may not receive a scholarship under this Article for more than four full academic years.

"§ **115C-499.3. Scholarship amounts; amounts dependent on net income available.**

(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs.

(b) Subject to the maximum amounts provided in this section, the Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the amount of net income available under G.S. 18C-164(b)(2). If the net income available is not sufficient to fully fund the scholarships to the maximum amount, all scholarships shall be reduced equally, to the extent practicable, so that every eligible applicant shall receive the same scholarship amount.

"§ **115C-499.4. Scholarship administration; reporting requirements.**

(a) The scholarships provided for in this Article shall be administered by the Authority under rules adopted by the Authority in accordance with the provisions of this Article.

(b) The Authority shall report no later than June 1, 2008, and annually thereafter to the Joint Legislative Education Oversight Committee. The report shall contain, for the previous academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible postsecondary institutions that received the funds."

SECTION 3.(a) G.S. 14-289 reads as rewritten:

"§ **14-289. Advertising lotteries.**

Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if anyone by writing or printing or by circular or letter or in any other way, ~~advertise or publish~~ advertises or publishes an account of a lottery, whether within or without this State, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a Class 2 misdemeanor."

SECTION 3.(b) G.S. 14-290 reads as rewritten:

"§ **14-290. Dealing in lotteries.**

Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known; or if any person shall, by such way and means, expose or set to sale any house, real estate, goods, chattels, cash, written evidence of debt, certificates of claims or any other thing of value whatsoever, every person so offending shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed two thousand dollars ($2,000). Any person who engages in disposing of any species of property whatsoever, including money and evidences of debt, or in any manner distributes gifts or prizes upon tickets, bottle crowns, bottle caps, seals on containers, other devices or certificates sold for that purpose, shall be held liable to prosecution under this section. Any person who shall have in his possession any tickets, certificates or orders used in the operation of any lottery shall be held liable

under this section, and the mere possession of such tickets shall be prima facie evidence of the violation of this section. This section shall not apply to the possession of a lottery ticket or share for a lottery game being lawfully conducted in another state."

SECTION 3.(c) G.S. 14-291 reads as rewritten:

"§ **14-291. Selling lottery tickets and acting as agent for lotteries.**

Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if any person shall sell, barter or otherwise dispose of any lottery ticket or order for any number of shares in any lottery, or shall in anywise be concerned in such lottery, by acting as agent in the State for or on behalf of any such lottery, to be drawn or paid either out of or within the State, such person shall be guilty of a Class 2 misdemeanor."

SECTION 3.(d) G.S. 14-291.1 reads as rewritten:

"§ **14-291.1. Selling 'numbers' tickets; possession prima facie evidence of violation.**

Except as provided in Chapter 18C of the General Statutes, in connection with a lawful lottery conducted in another state, or in connection with a lawful raffle as provided in Part 2 of this Article, if any person shall sell, barter or cause to be sold or bartered, any ticket, token, certificate or order for any number or shares in any lottery, commonly known as the numbers or butter and egg lottery, or lotteries of similar character, to be drawn or paid within or without the State, such person shall be guilty of a Class 2 misdemeanor. Any person who shall have in his possession any tickets, tokens, certificates or orders used in the operation of any such lottery shall be guilty under this section, and the possession of such tickets shall be prima facie evidence of the violation of this section."

SECTION 3.(e) G.S. 14-292 reads as rewritten:

"§ **14-292. Gambling.**

Except as provided in Chapter 18C of the General Statutes or in Part 2 of this Article, any person or organization that operates any game of chance or any person who plays at or bets on any game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, shall be guilty of a Class 2 misdemeanor. This section shall not apply to a person who plays at or bets on any lottery game being lawfully conducted in any state."

SECTION 3.(f) G.S. 14-293 reads as rewritten:

"§ **14-293. Allowing gambling in houses of public entertainment; penalty.**

~~If~~ Except as provided in Chapter 18C of the General Statutes, if any keeper of an ordinary or other house of entertainment, or of a house wherein alcoholic beverages are retailed, shall knowingly suffer any game, at which money or property, or anything of value, is bet, whether the same be in stake or not, to be played in any such house, or in any part of the premises occupied therewith; or shall furnish persons so playing or betting either on said premises or elsewhere with drink or other thing for their comfort or subsistence during the time of play, he shall be guilty of a Class 2 misdemeanor. Any person who shall be convicted under this section shall, upon such conviction, forfeit his license to do any of the businesses mentioned in this section, and shall be forever debarred from doing any of such businesses in this State. The court shall embody in its judgment that such person has forfeited his license, and no board of county commissioners, board of town commissioners or board of aldermen shall thereafter have power or authority to grant to such convicted person or his agent a license to do any of the businesses mentioned herein."

SECTION 3.(g) G.S. 14-299 reads as rewritten:

"§ **14-299. Property exhibited by gamblers to be seized; disposition of same.**

~~All~~ Except as provided in Chapter 18C of the General Statutes or in G.S. 14-292, all moneys or other property or thing of value exhibited for the purpose of alluring persons to bet on any game, or used in the conduct of any such game, including any motor vehicle used in the conduct of a lottery within the purview of G.S. 14-291.1, shall be liable to be seized by any court of competent jurisdiction or by any person acting under its warrant. Moneys so seized shall be turned over to and paid to the treasurer of the county wherein they are seized, and placed in the general fund of the county. Any property seized which is used for and is suitable only for gambling shall be destroyed, and all other property so seized shall be sold in the manner provided for the sale of personal property by execution, and the proceeds derived from said sale shall (after deducting the expenses of keeping the property and the costs of the sale and after paying, according to their priorities all known prior, bona fide liens which were created without the lienor having knowledge or notice that the motor vehicle or other property was being used or to be used in connection with the conduct of such game or lottery) be turned over and paid to the treasurer of the county wherein the property was seized, to be placed by said treasurer in the general fund of the county."

SECTION 4. Chapter 14 of the General Statutes is amended by adding the following new section to read:

"§ **14-309.2. Part does not apply to the Lottery.**

The provisions of this Part shall not apply to the North Carolina State Lottery established in Chapter 18C of the General Statutes."

SECTION 5. G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

…

(23) The North Carolina State Lottery Commission."

SECTION 6. Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"§ **114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.**

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any prospective lottery retailer or lottery contractor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the prospective lottery retailer or lottery contractor, a form signed by the prospective employee of the Commission, or of the prospective lottery retailer or lottery contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the prospective employee of the Commission, or prospective lottery retailer or lottery contractor, shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The North Carolina State Lottery Commission and its Director shall keep all information obtained pursuant to this section confidential."

SECTION 7. G.S. 116B-54 is amended by adding a new subsection to read:

"(f) Prizes that remain unclaimed after the period set by the Commission for claiming those prizes, as provided in G.S. 143D-145(a)(6), are not abandoned property."

SECTION 8. G.S. 120-123 is amended by adding a new subdivision at the end to read:

"(78) The North Carolina State Lottery Commission, as established in Chapter 18C of the General Statutes."

SECTION 9. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.
(2) Officers and employees of the Judicial Department.
(3) Officers and employees of the General Assembly.
(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.
(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.
(10) Repealed by Session Laws 1991, c. 84, s. 1.
(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.
(14) Employees of the North Carolina State Ports Authority.
(15) Employees of the North Carolina Global TransPark Authority.
(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.
(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.
(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(20) Employees of the North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.
(21) Employees of the Clean Water Management Trust Fund.
(22) Employees of the North Carolina Turnpike Authority.
(23) The Executive Administrator and the Deputy Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.
(24) The North Carolina State Lottery Director and employees of the North Carolina State Lottery."

SECTION 10. G.S. 147-69.2(a) reads as rewritten:

"(a) This section applies to funds held by the State Treasurer to the credit of:
(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1,
(17a) North Carolina Veterans Home Trust Fund,
(17b) North Carolina National Guard Pension Fund,
(17c) Retiree Health Premium Reserve Account, ~~and~~
(17d) The Election ~~Fund.~~Fund,
(17e) The North Carolina State Lottery Fund, and
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act."

SECTION 11.(a) The Commission may adopt emergency rules pursuant to G.S. 150B-21.1A with a reference to this section as the basis for the adoption of those rules as emergency rules.

SECTION 11.(b) This section shall become effective when it becomes law and shall expire June 30, 2007.

SECTION 12. The first security audit required under G.S. 18C-123(a) shall be conducted at the beginning of the first calendar year after the effective date of this act. The first audit required under G.S. 18C-123(d) shall be conducted at the end of the first fiscal year after the effective date of this act.

SECTION 13. The Department of Health and Human Services shall study the effects of the establishment and operation of the North Carolina State Lottery on the incidence of gambling addiction in this State. The Department shall report the results of its study, including any proposed legislation, to the Joint Legislative Health Care Oversight Committee, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than January 1, 2007.

SECTION 14. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act.

SECTION 15. The State Treasurer shall lend to the North Carolina State Lottery Commission, at a rate of interest comparable to short-term rates in the private capital market and with repayment terms satisfactory to both parties, sufficient funds to cover initial operating expenses of the Commission, except that the total amount borrowed by the Commission shall not exceed ten million dollars ($10,000,000). The borrowed funds shall be deposited in the North Carolina State Lottery Fund and shall be available for expenditure for the purposes set forth in this act without further action by the General Assembly. The Commission shall repay any funds lent to it pursuant to this section within twenty-four months after the effective date of this act.

SECTION 16. Except as otherwise provided in this act, it is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of August, 2005.

Became law upon approval of the Governor at 11:30 a.m. on the 31st day of August, 2005.

H.B. 320 **Session Law 2005-345**

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER MODIFICATIONS TO THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 2.1 of S.L. 2005-276 reads as rewritten:

"**SECTION 2.1.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – General Fund	**2005-2006**	**2006-2007**
EDUCATION		
Community Colleges System Office	$ 787,685,943	$ 767,295,886
Department of Public Instruction	6,607,998,945	6,579,807,097
University of North Carolina – Board of Governors		
Appalachian State University	97,708,514	98,114,232
East Carolina University		

Academic Affairs	165,132,181	168,098,010
Health Affairs	45,624,110	45,671,394
Elizabeth City State University	28,376,210	28,173,367
Fayetteville State University	42,540,261	42,778,425
North Carolina Agricultural and Technical State University	76,497,695	76,533,207
North Carolina Central University	59,223,437	58,883,106
North Carolina School of the Arts	21,173,905	20,698,614
North Carolina State University		
Academic Affairs	299,773,341	304,775,818
Agricultural Extension	36,389,142	35,668,328
Agricultural Research	45,200,460	45,281,347
University of North Carolina at Asheville	29,211,816	29,705,695
University of North Carolina at Chapel Hill		
Academic Affairs	212,164,735	220,475,219
~~Health Affairs~~	~~162,938,570~~	~~164,709,561~~
Health Affairs	163,938,570	165,709,561
Area Health Education Centers	44,743,422	44,743,422
University of North Carolina at Charlotte	125,613,588	132,319,883
University of North Carolina at Greensboro	112,318,841	113,459,797
University of North Carolina at Pembroke	41,277,854	41,754,482
University of North Carolina at Wilmington	74,161,294	76,371,666
Western Carolina University	71,404,729	71,990,778
Winston-Salem State University	48,726,028	48,658,641
General Administration	48,804,831	48,890,151
University Institutional Programs	24,610,415	28,278,415
Related Educational Programs	112,937,512	114,905,552
North Carolina School of Science and Mathematics	14,555,420	14,513,392
UNC Hospitals at Chapel Hill	~~44,944,579~~ 43,944,579	43,944,579
Total University of North Carolina – Board of Governors	$ 2,086,052,890	~~$2,119,397,081~~ $2,120,397,081

HEALTH AND HUMAN SERVICES

Department of Health and Human Services		
Office of the Secretary	$ 113,855,919	$ 118,880,919
Division of Aging	29,975,639	29,495,139
Division of Blind Services/Deaf/HH	9,676,797	9,681,220
Division of Child Development	268,350,017	267,356,799
Division of Education Services	33,852,267	34,281,895
Division of Facility Services	13,608,838	15,959,466
Division of Medical Assistance	2,509,772,054	2,751,209,159
Division of Mental Health	603,315,155	602,556,655
NC Health Choice	68,169,765	51,882,902
Division of Public Health	152,391,232	150,814,496
Division of Social Services	188,512,693	190,679,285
Division of Vocational Rehabilitation Services	41,755,526	42,142,193

Total Health and Human Services	$ 4,033,235,902	$ 4,264,940,128
NATURAL AND ECONOMIC RESOURCES		
Department of Agriculture and Consumer Services	$ 52,040,846	$ 51,032,884
Department of Commerce		
Commerce	49,686,999	36,728,265
Commerce State-Aid	26,512,085	11,722,085
NC Biotechnology Center	12,083,395	10,583,395
Rural Economic Development Center	25,277,607	25,052,607
Department of Environment and Natural Resources	177,197,119	167,451,089
Department of Labor	14,419,553	14,434,925
JUSTICE AND PUBLIC SAFETY		
Department of Correction	$ 1,029,924,421	$ 1,048,492,502
Department of Crime Control and Public Safety	~~34,793,934~~ 34,843,934	35,153,488
Judicial Department	~~342,604,760~~ 342,924,393	~~345,726,582~~ 345,760,410
Judicial Department – Indigent Defense	94,037,973	88,648,414
Department of Justice	77,322,567	78,697,271
Department of Juvenile Justice and Delinquency Prevention	140,377,666	138,873,166
GENERAL GOVERNMENT		
Department of Administration	$ 62,039,261	$ 58,818,473
Office of Administrative Hearings	2,987,410	2,969,712
Department of State Auditor	10,850,737	10,840,918
Office of State Controller	10,043,268	10,044,511
Department of Cultural Resources		
Cultural Resources	~~73,433,514~~73,458,514	62,917,147
Roanoke Island Commission	1,783,374	1,783,374
State Board of Elections	5,107,543	5,069,307
General Assembly	42,934,588	46,965,432

Office of the Governor		
Office of the Governor	5,324,590	5,344,528
Office of State Budget and Management	5,019,735	5,021,795
OSBM – Reserve for Special Appropriations	11,358,429	5,111,429
Housing Finance Agency	10,450,945	4,750,945
Department of Insurance		
Insurance	28,220,714	28,110,582
Insurance – Volunteer Safety Workers' Compensation	2,000,000	4,500,000
Office of Lieutenant Governor	754,737	753,037
Department of Revenue	~~81,447,475~~ 81,467,175	~~80,630,250~~ 80,673,250
Department of Secretary of State	8,934,063	9,269,633
Department of State Treasurer		
State Treasurer	8,690,595	8,295,843
State Treasurer – Retirement for Fire and Rescue Squad Workers	8,651,457	8,651,457
TRANSPORTATION		
Department of Transportation	$ 200,000	$ 0
RESERVES, ADJUSTMENTS AND DEBT SERVICE		
Reserve for Compensation Increases	$ 243,181,327	$ 235,185,705
Salary Adjustment Fund: 2005-2007 Biennium	4,500,000	4,500,000
Salary Adjustment Fund: 2004-2005 Fiscal Year	4,500,000	4,500,000
Reserve for Teachers' and State Employees' Retirement Contribution	13,810,800	13,810,800
Reserve for Retirement System Payback	25,000,000	0
Reserve for Death Benefit Trust	12,899,200	12,899,200
Reserve for Disability Income Plan	6,586,500	6,586,500
Reserve for State Health Plan	108,648,000	142,728,000
Contingency and Emergency Fund	5,000,000	5,000,000

Reserve for Information Technology Rate Adjustments	(2,300,000)	(2,300,000)
Information Technology Fund	24,375,000	8,025,000
MH/DD/SAS Trust Fund	10,000,000	0
Health and Wellness Trust Fund	10,000,000	0
Reserve for Job Development Investment Grants (JDIG)	9,000,000	12,400,000
Reserve for Increased Fuel Costs	3,000,000	0
Reserve for Contingent Appropriations	85,000,000	85,000,000
Debt Service		
General Debt Service	489,544,211	619,291,140
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	**~~$ 17,025,846,458~~ $ 17,026,260,791**	**~~$ 17,293,127,963~~ $ 17,294,204,791**"

SECTION 1.(b) Section 2.2.(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 2.2.(a)** The General Fund availability used in developing the 2005-2007 biennial budget is shown below:

	FY 2005-2006	**FY 2006-2007**
Unappropriated Balance Remaining from Previous Year	$0	~~$117,227,875~~ $113,079,042
Projected Over Collections FY 2004-2005	681,500,000	0
Projected Reversions FY 2004-2005	115,000,000	0
Less Earmarkings of Year End Credit Balance		0
Savings Reserve Account	(199,125,000)	0
Repairs and Renovations	(125,000,000)	0
Beginning Unreserved Credit Balance	**$472,375,000**	**~~$114,345,875~~ $113,079,042**
Revenues Based on Existing Tax Structure	**$15,417,300,000**	**~~$ 16,993,257,284~~ $ 16,077,600,000**
Nontax Revenues		
Investment Income	74,800,000	78,700,000
Judicial Fees	144,800,000	148,300,000
Disproportionate Share	100,000,000	100,000,000
Insurance	49,500,000	51,300,000
Other Nontax Revenues	138,000,000	151,300,000
Highway Trust Fund/Use Tax		

Reimbursement Transfer	252,558,117	252,663,009
Highway Fund Transfer	16,166,400	16,166,400
Subtotal Nontax Revenues	**$ 775,824,517**	**$ 798,429,409**
Total General Fund Availability	**$ 16,665,499,517**	**~~$ 16,990,375,284~~** **$ 16,989,108,451**
Adjustments to Availability: 2005 Session		
Streamlined Sales Tax Changes	40,000,000	61,700,000
Maintain 4.5% Sales Tax Rate	417,100,000	462,700,000
Other Sales Tax Changes		
Apply Sales Tax to Candy	9,800,000	15,800,000
Apply General Sales Tax Rate to Cable	10,900,000	26,100,000
Exempt Potting Soil for Farmers	(200,000)	(300,000)
Tobacco Tax Rate Changes	118,800,000	189,400,000
Extend 8.25% Individual Income Tax Rate for 2 years	39,800,000	89,700,000
Continue Use Tax Line on Individual Returns	3,200,000	3,200,000
Increase Contribution to NC Political Parties Financing Fund – Tax Return Designation	0	(1,000,000)
Conform Estate Tax to Federal Sunset	29,100,000	115,600,000
Film Industry Jobs Incentives	(3,500,000)	(3,500,000)
IRC Update – Partial Conformance	(8,000,000)	(10,700,000)
Adjust Rates for Health Maintenance Organizations	0	14,300,000
SL 2005-241 Extend JDIG and Bill Lee Act	0	(2,030,000)
Increase Earmarking for NC Grape Growers Council	(150,000)	(150,000)
Proceeds from the Sale of the Polk Building	4,977,781	0
Justice and Public Safety Fees	~~17,028,271~~16,868,771	20,428,271
Transfer from Tobacco Trust Fund	34,000,000	30,000,000
Transfers from Special Revenue and Other Funds	5,453,950	0
Reimburse Debt Service for Certain Capital Facilities and Land Acquisition per S.L. 2004-179	5,958,723	21,060,827
Transfer to Civil Penalty and Forfeiture Fund	(80,000,000)	(85,000,000)
Suspend Highway Fund Transfer	(16,166,400)	(16,166,400)
Adjust Transfer from Insurance Regulatory Fund	389,013	243,813
Adjust Transfer from Treasurer's Office	468,478	67,478
Reimbursement for Property Tax Commission Expenses	0	168,616
Subtotal Adjustments to Availability: 2005 Session	**~~$ 628,959,816~~** **$ 628,800,316**	**~~$ 934,483,989~~** **$ 931,622,605**
Revised General Fund Availability	**~~$ 17,294,459,333~~** **$ 17,294,299,833**	**~~$ 17,927,741,273~~** **$ 17,920,731,056**
Less: General Fund Appropriations		

SB 622 (2005 Appropriations Act)	~~(17,077,231,458)~~ (17,081,220,791)	~~(17,293,127,963)~~ (17,294,204,791)
G.S. 143-15.3B: Clean Water Management Trust Fund	(100,000,000)	(100,000,000)
Total General Fund Appropriations 2005-2007 Biennium	**~~($17,177,231,458)~~ ($17,181,220,791)**	**~~($17,393,127,963)~~ ($17,394,204,791)**
Unappropriated Balance Remaining	**~~$117,227,875~~ $113,079,042**	**~~$534,613,310~~ $526,526,265**"

SECTION 2.(a) Section 6.12.(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 6.12.(b)** If this section, or any portion of the amendment made to G.S. 66-291(b)(2) by this section, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. ~~66-291(b)(2)~~ 66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this section shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this section. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect."

SECTION 2.(b) This section becomes effective January 1, 2006.

SECTION 3.(a) Effective July 1, 2005, Section 6.29 of S.L. 2005-276 is repealed.

SECTION 3.(b) Effective March 1, 2006, G.S. 58-50-30(a3) reads as rewritten:

"(a3) Whenever any health benefit plan, subscriber contract, or policy of insurance issued by a health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of the chiropractor's practice as defined in G.S. 90-151 unless a comparable limitation is imposed on the medically necessary treatment if performed or authorized by any other duly licensed physician. An insurer shall not impose as a limitation on treatment or level of coverage a co-payment amount charged to the insured for chiropractic services that is higher than the co-payment amount charged to the insured for the services of a duly licensed primary care physician for a comparable medically necessary treatment or condition."

SECTION 3.(c) This sections applies to policies issued, renewed, or amended on or after March 1, 2006.

SECTION 4. Section 6.36.(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 6.36.(a)** The Office of State Budget and Management shall develop a plan to consolidate all State-funded laboratories. This plan will augment capital and space-allocation plans already developed for the new laboratories.

The State-funded laboratories to be considered for consolidation include the Public Health State Laboratory within the Department of Health and Human Services, the Agricultural Laboratory within the Department of Agriculture and Consumer Services,

Veterinary Division, and the State Bureau of Investigation Crime Laboratories within the Department of Justice. The Office of State Budget and Management shall use up to two hundred fifty thousand dollars ($250,000) of funds available to hire an independent consultant who shall conduct the study and develop the consolidation plan. ~~The Office of State Budget and Management shall hire an independent consultant to conduct the study and develop the consolidation plan.~~ The study shall include the feasibility of consolidating these laboratory functions and the identification of any duplicative functions."

SECTION 5. Section 7.5 of S.L. 2005-276 reads as rewritten:

"**SECTION 7.5.** Effective July 1, 2005, any permanent certified personnel employed on ~~July 1, 2003,~~ July 1, 2005, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2005, any permanent personnel employed on ~~July 1, 2004,~~ July 1, 2005, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%).

For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus."

SECTION 6.(a) Section 7.32.(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 7.32.(b)** These funds shall be used to establish new high schools in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the needs of participating employers.

Funds shall not be allotted until Learn and Earn high schools and planning sites are ~~certified as operational.~~ approved by the State Board of Education. Within funds available, the State Board of Education may approve additional planning sites. Learn and Earn planning sites are expected to complete the planning process by the end of the fiscal year for which the planning funds are awarded."

SECTION 6.(b) G.S. 115C-238.51(c), as rewritten by Section 7.33.(a) of S.L. 2005-276, reads as rewritten:

"(c) The application shall be submitted to the State Board of Education and the applicable governing ~~Boards by November 1 of each year.~~ Boards. The Boards shall appoint a joint advisory committee to review the applications and to recommend to the Boards those programs that meet the requirements of this Part and that achieve the purposes set out in G.S. 115C-238.50."

SECTION 6.(c) G.S. 115C-238.51(d), as rewritten by Section 7.33.(a) of S.L. 2005-276, reads as rewritten:

"(d) The Boards may approve programs recommended by the joint advisory committee or may approve other programs that were not recommended. The Boards shall approve all applications by ~~March 15~~ June 30 of each year. No application shall be approved unless the State Board of Education and the applicable governing Board find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located."

SECTION 7. Section 7.51(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 7.51.(c)** Subsection (b) of this section becomes effective July 1, 2006. Notwithstanding the provisions of G.S. 105-164.44H, for the 2006-2007 fiscal year, the

amount transferred to the State Public School Fund each quarter shall equal one-fourth of the amount refunded under ~~G.S. 105-164.4(c)(2b) and (2c)~~ G.S. 105-164.14(c)(2b) and (2c) during the 2005-2006 fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year. The remainder of this section becomes effective July 1, 2005, and applies to sales made on or after that date."

SECTION 8. Section 7.57 of S.L. 2005-276 reads as rewritten:

"**SECTION 7.57.** Of the funds appropriated for Student Transportation for the 2005-2006 fiscal year, the Department of Public Instruction shall use up to one hundred fifty thousand dollars ($150,000) for a study of the current allotment formula for school transportation. The study shall be conducted by an independent consultant.

In the course of the study, the consultant shall consider whether (i) the current formula sufficiently encourages the efficient and effective use of school transportation funds by urban and rural school systems, (ii) the formula is adequately and equitably meeting the needs of school systems, and (iii) the formula is appropriate in light of the Leandro litigation. The consultant shall also propose options for reducing the severe and growing disparity in funding that exists under the formula among local school administrative units.

The consultant shall report the results of its study to the State Board of Education by ~~December 1, 2005.~~March 1, 2006. The State Board of Education shall submit a plan for the implementation of the consultant's report to the Joint Legislative Education Oversight Committee by ~~March 15, 2006.~~April 15, 2006."

SECTION 9. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 7.62.** Notwithstanding any other provision of law, of the funds appropriated in S.L. 2005-1 to the Disaster Relief Reserve Fund, the sum of seven hundred fifty thousand dollars ($750,000) is hereby transferred from the Disaster Relief Reserve Fund to Hyde County for the 2005-2006 fiscal year to be used to repair Ocracoke School which was damaged as a result of Hurricane Isabel and Hurricane Alex."

SECTION 10. Section 8.11 of S.L. 2005-276 reads as rewritten:

"**SECTION 8.11.** ~~Funds appropriated in this act for North Carolina Electronics and Information Technologies Association's Defense Technology Innovation Center~~ Of the funds appropriated in this act to the Community Colleges System Office, the sum of two million dollars ($2,000,000) for the 2005-2006 fiscal year shall be allocated to the Partnership for Defense Innovation for the establishment of the Defense Technology Innovation Center. These funds shall be used for the following:

(1) Site selection and acquisition, including the purchase or lease of real property to house the Center; the construction of buildings or other site structures; the improvement or refurbishment of existing structures to provide appropriate laboratory and administrative space; and the improvement of existing infrastructure at the facility, including improvements to utility, telecommunications, and Internet infrastructure.

(2) Equipment acquisition, including acquisition of laboratory equipment and supplies and office furniture, equipment, and supplies.

(3) Employment of staff to support the mission of the Center and to oversee day-to-day operations of the Center.

(4) ~~Implementation of a comprehensive business and marketing plan for the Center.~~ Implementation of the business and marketing plan

delivered to the General Assembly in 2005 by the North Carolina Electronics and Information Technologies Association (NCEITA) as directed by Section 8.17 of S.L. 2004-124, including contracting with an experienced incubator development team to develop the Center and implement the business plan.

(5) Development of a tenant screening process and the recruitment of appropriate tenants for the Center.

(6) Administration and operation of the Center and the development of a sustainable business plan for the Center."

SECTION 11. Section 9.6.(d) of S.L. 2005-276 reads as rewritten:

"**SECTION 9.6.(d)** All obligations to students for uses of the funds ~~set out in sections~~ that were made before the date this act becomes law shall be fulfilled as to students who remain eligible under the provisions of the respective programs."

SECTION 12. Section 9.16 of S.L. 2005-276 reads as rewritten:

"**SECTION 9.16.** Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2005-2006 fiscal year the sum of ~~one million eighty-eight thousand nine hundred forty-one dollars ($1,088,941)~~ one million eighty-nine thousand dollars ($1,089,000) shall be allocated to North Carolina Agricultural and Technical State University for agricultural and research extension programs. It is the intent of the General Assembly to fully fund these programs for the 2006-2007 fiscal year."

SECTION 13. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 9.38.** Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the University of North Carolina at Chapel Hill – Health Affairs, the sum of one million dollars ($1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year shall be used by the University of North Carolina at Chapel Hill School of Medicine to establish and operate a translational medicine program."

SECTION 14. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 9.38.** G.S. 116-143.3 reads as rewritten:

"§ **116-143.3. Tuition of active duty personnel in the armed services.**

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

(1) The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(2) The term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing.

(3) The term "tuition assistance" shall be used as defined in the United States Department of Defense Directive 1322.8, implementing 10 U.S.C. § 2007.

(b) Any active duty member of the armed services qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the in-State tuition rate and applicable mandatory fees for enrollments while the member of the armed services is abiding in this State incident to active military duty in this State. In the event the active duty member of the armed services is reassigned outside of North Carolina, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member is continuously enrolled in the degree or other

program in which the member was enrolled at the time the member is reassigned. In the event the active duty member of the armed services receives an Honorable Discharge from military service, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member establishes residency in North Carolina within 30 days after the discharge and is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is discharged.

(b1), (b2) Repealed by Session Laws 2004-130, s. 1, effective August 1, 2004.

(c) Any dependent relative of a member of the armed services who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the armed services is reassigned outside of North Carolina, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is reassigned. In the event the member of the armed services receives an Honorable Discharge from military service, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative establishes residency within North Carolina within 30 days after the discharge and is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is discharged.

(d) The burden of proving entitlement to the benefit of this section shall lie with the applicant therefor.

(e) A person charged less than the out-of-state tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefit of G.S. 116-143.1(g), (h), (i), (j), (k), or (l).""

SECTION 15. Section 5.1.(v) of S.L. 2005-276 reads as rewritten:

"**SECTION 5.1.(v)** The sum of one million seven hundred six thousand sixty-three dollars ($1,706,063) appropriated in this section in the ~~TANF~~ Social Services Block Grant for child caring agencies for the 2005-2006 fiscal year shall be allocated to the State Private Child Caring Agencies Fund."

SECTION 16. Section 10.21C(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.21C.(c)** This section becomes effective ~~January 1, 2006,~~ July 1, 2006, and applies to recipients of medical assistance on or after that date."

SECTION 17. G.S. 90-113.63(b), as enacted by Section 10.36 of S.L. 2005-276, reads as rewritten:

"(b) The Commission ~~for Health Services~~ shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

(1) The dispenser's DEA number.

(2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:

a. Full address, including city, state, and zip code,

b. Telephone number, and

c. Date of birth.

(3) The date the prescription was written.
(4) The date the prescription was filled.
(5) The prescription number.
(6) Whether the prescription is new or a refill.
(7) Metric quantity of the dispensed drug.
(8) Estimated days of supply of dispensed drug, if provided to the dispenser.
(9) National Drug Code of dispensed drug.
(10) Prescriber's DEA number."

SECTION 18. Section 10.39 of S.L. 2005-276 is amended by adding the following new subsection to read:

"**SECTION 10.39.(d)** Subsection (a) of this section becomes effective October 1, 2005."

SECTION 19. Section 10.59E of S.L. 2005-276 reads as rewritten:

"**SECTION 10.59E.** Of funds appropriated in this act to the Department of Health and Human Services for the 2005-2006 fiscal year, the sum of two million dollars ($2,000,000) shall be allocated for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) to build capacity of local public health departments, American Indian tribes, and faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to white persons. The areas of focus on health status shall be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths. These funds shall also be used to support one FTE in the Department of Health and Human Services to monitor, track, and evaluate grantees' progress in meeting performance-based standards and outcomes established by the Department."

SECTION 20.(a) Section 10.59F(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.59F.(a)** Program established. – There is established in the Department of Health and Human Services, Division of Public Health, the Governor's Vision Care Program. The purpose of the Program is to provide funds for early detection and correction of vision problems in children enrolling or enrolled in grades K through 3 who are eligible for services under the Program. These funds shall be allocated to reimburse optometrists and ophthalmologists licensed to practice in this State for the comprehensive eye examination, including necessary spectacles, provided to meet the requirements of G.S. 130A-440.1."

SECTION 20.(b) Section 10.59F(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.59F.(b)** Eligibility. – Children eligible for services under this section shall be those with a family income not exceeding two hundred fifty percent (250%) of the federal poverty level, who do not ~~have~~ receive comparable services through private health insurance coverage, and are not eligible for services under NC Health Choice, Medicaid, the Department of Health and Human Services' Commission for the Blind programs, VSP's Sight for Students, or the Lions Club Foundation."

SECTION 20.(c) Section 10.59F(f) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.59F.(f)** Not later than ~~May 1, 2006,~~ January 15, 2006, the Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate

Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the implementation of this section. ~~The report shall include the number of children who were exempt from the comprehensive eye examination requirement under G.S. 130A-440.1(a).~~"

SECTION 20.(d) Section 10.59F(h) of S.L. 2005-276 reads as rewritten:

"**SECTION 10.59F.(h)** ~~This~~ Subsection (g) of this section becomes effective beginning with the 2006-2007 school year. The remainder of this section is effective July 1, 2005."

SECTION 21. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 10.37A.** Funds appropriated in this act to the Department of Health and Human Services for the Jewish Community Center of Charlotte, Inc. shall be paid to Senior Activities and Services, Inc. to support activities of the Levine Senior Center of Matthews."

SECTION 22. G.S. 19A-24(5), as enacted by Section 11.5.(b) of S.L. 2005-276, reads as rewritten:

"(5) Adopt rules on the euthanasia of animals in the possession or custody of any person ~~licensed~~ required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process."

SECTION 23. Section 12.5(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 12.5.(a)** Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million one hundred ninety-seven thousand seven hundred sixty-two dollars ($3,197,762) for the 2005-2006 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2005-2006
Aurora Fossil Museum	$59,057
Cape Fear Museum	$161,007
Carolina Raptor Center	$112,174
Catawba Science Center	$133,429
Colburn Gem and Mineral Museum, Inc.	$74,545
Discovery Place	$662,865
Eastern NC Regional Science Center	$50,000
~~Elizabeth City Science Center~~	$50,000
Port Discover: Northeastern North Carolina's	

Center for Hands-On Science, Inc.	
Fascinate-U	$80,742
Granville County Museum Commission, Inc.–Harris Gallery	$56,422
Greensboro Children's Museum	$135,076
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$134,499
Highlands Nature Center	$79,268
Imagination Station	$86,034
Kidsenses	$50,000
Museum of Coastal Carolina	$74,192
Natural Science Center of Greensboro	$186,354
North Carolina Museum of Life and Science	$379,826
Rocky Mount Children's Museum	$72,254
Schiele Museum of Natural History	$229,547
Sci Works Science Center and Environmental Park of Forsyth County	$146,499
Western North Carolina Nature Center	$112,879
Wilmington Children's Museum	$71,093
Total	$3,197,762"

SECTION 24. Section 13.4.(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 13.4.(a)** Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. ~~The total administrative costs paid with funds from the Reserve shall not exceed the total administrative costs paid in fiscal year 2004-2005.~~ The total administrative costs paid with funds from the Reserve in the 2005-2006 fiscal year shall not exceed two million dollars ($2,000,000)."

SECTION 25. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 13.15.** G.S. 143B-472.80 is amended by adding a new subdivision to read:

"(5) To prepare a biennial report by county on the status of trends that reflect the impact of education on economic growth for the twenty-first century. This report shall contain information about the status of each county with regard to education and economic growth. The Board shall provide the report to the General Assembly prior to February 1, 2007, and biennially thereafter.""

SECTION 26. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 13.16.** Of the funds appropriated in this act to the Department of Commerce for the 2005-2006 fiscal year to promote the North Carolina furniture industry, the sum of seven hundred fifty thousand dollars ($750,000) shall be allocated to the High Point International Home Furnishings Market Authority Corporation to promote the International Home Furnishings Market."

SECTION 27.(a) S.L. 2005-276 is amended by adding a new subsection to read:

"**SECTION 14.2.(f1)** G.S. 7A-133(a) as amended by Section 14.2.(f) of this act, reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	5	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	4	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	5	Pitt
3B	5	Craven
		Pamlico
		Carteret
4	8	Sampson
		Duplin
		Jones
		Onslow
5	8	New Hanover
		Pender
6A	2	Halifax
6B	3	Northampton
		Bertie
		Hertford
7	7	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir
9	4	Granville
		(part of Vance
		see subsection (b))
		Franklin
9A	2	Person
		Caswell
9B	2	Warren
		(part of Vance
		see subsection (b))
10	15	Wake
11	8	Harnett
		Johnston

		Lee
12	9	Cumberland
13	6	Bladen
		Brunswick
		Columbus
14	6	Durham
15A	4	Alamance
15B	4	Orange
		Chatham
16A	3	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	4	Stokes
		Surry
18	12	Guilford
19A	4	Cabarrus
19B	6	Montgomery
		Moore
		Randolph
19C	4	Rowan
20A	4	Stanly
		Anson
		Richmond
~~20B~~	~~3~~	~~Union~~
20B	1	(part of Union
		see subsection (b))
20C	2	(part of Union
		see subsection (b))
21	9	Forsyth
22	9	Alexander
		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	8	Burke
		Caldwell
		Catawba
26	17	Mecklenburg
27A	6	Gaston

27B	4	Cleveland Lincoln
28	6	Buncombe
29A	3	McDowell Rutherford
29B	4	Henderson Polk Transylvania
30	5	Cherokee Clay Graham Haywood Jackson Macon Swain.""

SECTION 27.(b) A new subsection is added to S.L. 2005-276 to read:

"**SECTION 14.2.(f2)** G.S. 7A-133(b) reads as rewritten:

"(b) For district court districts of less than a whole county, or with part or all of one county with part of another, the composition of the district is as follows:

(1) District Court District 9 consists of Franklin and Granville Counties and the remainder of Vance County not in District Court District 9B.

(2) District Court District 9B consists of Warren County and East Henderson I, North Henderson I, North Henderson II, Middleburg, Townsville, and Williamsboro Precincts of Vance County.

(3) District Court District 20B consists of the remainder of Union County not in District Court District 20C.

(4) District Court District 20C consists of Precinct 01: Tract 204.01: Block Group 2: Block 2040, Block 2057, Block 2058, Block 2060, Block 2061, Block 2062, Block 2064, Block 2065; Tract 204.02: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 3: Block 3000, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Block Group 4: Block 4035, Block 4054, Block 4055; Precinct 02: Tract 205: Block Group 1:

Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1037, Block 1038; Block Group 2: Block 2081, Block 2082, Block 2092, Block 2099, Block 2100, Block 2101, Block 2102; Tract 206: Block Group 3: Block 3036, Block 3038, Block 3039, Block 3040, Block 3048; Block Group 4: Block 4053; Precinct 03, Precinct 04, Precinct 06: Tract 202.02: Block Group 1: Block 1012, Block 1013, Block 1014, Block 1015, Block 1017, Block 1018, Block 1021, Block 1022, Block 1023; Tract 204.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2033, Block 2034, Block 2035, Block 2036, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2056, Block 2063, Block 2999; Precinct 08, Precinct 09, Precinct 10, Precinct 13, Precinct 23: Tract 206: Block Group 4: Block 4051; Precinct 25: Tract 206: Block Group 4: Block 4036; Precinct 34, Precinct 36, Precinct 43 of Union County.

Precinct boundaries as used in this section for Vance County are those shown on maps on file with the Legislative Services Office on May 1, 1991, for Union County, are those shown on the Legislative Services Office's redistricting computer database on January 1, 2005; and for other counties are those reported by the United States Bureau of the Census under Public Law 94-171 for the 1990 Census in the IVTD Version of the TIGER files.""

SECTION 27.(c) Section 14.2.(h) of S.L. 2005-276 reads as rewritten:

"**SECTION 14.2.(h)** ~~The three district court judgeships for District 20B under subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Union County. The terms of the three judges living in Union County expire the first Monday in December 2008. Those judges' successors~~ The district court judgeship for District 20B under subsection (f) of this section shall be filled by the district court judge from current District 20 who resides in that portion of Union County included in District 20B. The term of that judge expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 general election. The two district court judgeships for District 20C under subsection (f) of this section shall be filled by the other two district court judges from current District 20 who reside in Union County. The terms of those judges expire the first Monday in December 2008. Those judges' successors shall be elected in the 2008 general election."

SECTION 28. Section 14.11 of S.L. 2005-276 reads as rewritten:

"**SECTION 14.11.** The Judicial Department, Office of Indigent Defense Services, may use up to the sum of one million sixty-nine thousand six hundred forty-five dollars ($1,069,645) in appropriated funds during the 2005-2006 fiscal year and up to the sum of one million twenty-three thousand one hundred thirty-five dollars ($1,023,135) in appropriated funds during the 2006-2007 fiscal year (i) for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services by creating up to 10 new attorney positions and five new support staff ~~positions.~~ positions; and (ii) to create up to two new assistant public defender positions and one new support staff position in the First Defender District and up to one new assistant public defender position in Defender District 3A,

for the purpose of representing indigent persons eligible for the appointment of counsel in Superior Court District 2 and District Court District 2. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion."

SECTION 29.(a) Section 14.22 of S.L. 2005-276 reads as rewritten:

"**SECTION 14.22.** ~~Funds~~ Except as otherwise provided in this act, funds appropriated to the Judicial Department in this act for the adult Drug Treatment Court program shall be used only to provide treatment and case coordination to offenders sentenced to intermediate punishment and to offenders sentenced to community punishment who are at risk of revocation."

SECTION 29.(b) S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 14.23.** Notwithstanding the provisions of Section 14.22 of this act, of the funds appropriated to the Judicial Department in this act, the sum of three hundred thousand dollars ($300,000) for the 2005-2006 fiscal year shall be used to fund the operations of the Mecklenburg Drug Treatment Court to provide treatment to DWI offenders and pretrial offenders."

SECTION 30. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 14.24.(a)** Of the funds appropriated to the Judicial Department in this act, the Department shall use the sum of nineteen thousand six hundred thirty-three dollars ($19,633) for the 2005-2006 fiscal year and the sum of thirty-three thousand eight hundred twenty-eight dollars ($33,828) for the 2006-2007 fiscal year to establish a new deputy clerk of court position in Hyde County.

SECTION 14.24.(b) This section becomes effective January 1, 2006."

SECTION 31. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 17.31.** G.S. 14-309.15(d) reads as rewritten:

"(d) The maximum cash prize that may be offered or paid for any one raffle is ~~ten thousand dollars ($10,000)~~ fifty thousand dollars ($50,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be fifty thousand dollars ($50,000). No real property may be offered as a prize in a raffle. The total cash prizes offered or paid by any nonprofit organization or association may not exceed ~~ten thousand dollars ($10,000)~~ fifty thousand dollars ($50,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed fifty thousand dollars ($50,000) in any calendar year.""

SECTION 32. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 18.3.** Of the funds appropriated in this act to the Department of Crime Control and Public Safety, the sum of fifty thousand dollars ($50,000) for the 2005-2006 fiscal year shall be used for the Warrenton National Guard Armory to be used for asbestos and lead paint abatement and other capital improvements."

SECTION 33. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 19A.2.** Of the funds appropriated to the Department of Cultural Resources in this act, the sum of twenty five thousand dollars ($25,000) for the 2005-2006 fiscal year shall be used as a grant-in-aid to the Carolinas Concert Association to provide disadvantaged youth with opportunities for education enrichment."

SECTION 34. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 19A.3.** Funds appropriated in this act to the Department of Cultural Resources for the 2005-2006 fiscal year for the Bethel Public Library shall be transferred to the Town of Bethel to be used for repairs and upgrades."

SECTION 35. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 21.3.** Funds appropriated in this act to the Department of Insurance for the 2005-2006 fiscal year for the Ansonville Volunteer Fire Department shall be allocated in equal shares to all volunteer fire departments in Anson County. Funds appropriated in this act to the Department of Insurance for the 2005-2006 fiscal year for the Union Volunteer Fire Department shall be allocated in equal shares to all volunteer fire departments in Union County."

SECTION 36. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 22.5A.** Of the funds appropriated in this act to the Department of Revenue, the sum of nineteen thousand seven hundred dollars ($19,700) for the 2005-2006 fiscal year and the sum of forty-three thousand dollars ($43,000) for the 2006-2007 fiscal year shall be used to pay the increased salaries of Property Tax Commission members."

SECTION 37. Section 22.6 of S.L. 2005-276 is repealed.

SECTION 38. Section 28.16 of S.L. 2005-276 is amended by adding a new subsection to read:

"**SECTION 28.16(b).** All funds appropriated by this act to the visitor center located on Staton Road in Transylvania County, including those funds designated as operating funds pursuant to G.S. 20-79.7(c)(2)j, may be used for capital improvements during the 2005-2007 fiscal biennium."

SECTION 39. Section 29.3 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.3.** The annual salaries, payable monthly, for the 2005-2006 and 2006-2007 fiscal years for the following executive branch officials are:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$97,175
State Controller	135,997
Commissioner of Motor Vehicles	97,175
Commissioner of Banks	109,279
Chairman, Employment Security Commission	133,161
State Personnel Director	106,765
Chairman, Parole Commission	88,733
Members of the Parole Commission (effective 7/1/05-8/31/05)	81,921
Members of the Parole Commission (effective 9/1/05)	40,960
Chairman, Utilities Commission	121,701
Members of the Utilities Commission	109,279
Executive Director, Agency for Public Telecommunications	81,921
Director, Museum of Art	99,573
Executive Director, North Carolina Agricultural Finance Authority	94,587
State Chief Information Officer	135,915"

SECTION 40. G.S. 120-37(c), as amended by Section 19B.1 and Section 29.8 of S.L. 2005-276, reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid

an annual salary of ninety-two thousand three hundred twenty-four dollars ($92,324) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives ~~and~~ or the President Pro Tempore of the ~~Senate~~ Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

SECTION 41. Section 29.20.(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 29.20.(a)** Of the revenue generated by implementing a fee for the required review of Form 21 and Form 26 Agreements, the Industrial Commission ~~may~~ shall use ~~up to~~ at least one hundred seventy-one thousand nine hundred dollars ($171,900) in each year of the 2005-2007 biennium to provide the full salary adjustments authorized by subsection (b) of this section and in-range salary adjustments for Industrial Commission staff."

SECTION 42. Subsections (a) through (h) of Section 29.30A of S.L. 2005-276 are repealed.

SECTION 43. G.S. 135-3(8)c., as amended by Section 29.28(a) of the S.L. 2005-276, reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach ~~on a permanent, full-time basis~~ in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the

provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 44. Section 30.2 of S.L. 2005-276 reads as rewritten:

"**SECTION 30.2.** There is appropriated from the General Fund for the 2005-2006 fiscal year the following amount for capital improvements:

Capital Improvements – General Fund	**2005-2006**
Department of Commerce – State Ports Authority	
Ports of Wilmington and Morehead City	$ 9,000,000
Department of Cultural Resources	
Capitol Area Visitor's Center	250,000
NC Museum of Art	10,000,000
Department of Environment and Natural Resources	
Division of Forest Resources – District 9	300,000
Water Resources Development Projects	~~15,260,000~~18,860,000
University of North Carolina System – Board of Governors	
~~North Carolina Agricultural and Technical State University – Visual and Performance Arts Building~~	~~25,000~~
North Carolina State University – Engineering Complex III	8,700,000
University of North Carolina at Chapel Hill – Renaissance Computing Institute	500,000
University of North Carolina at Chapel Hill – School of Dentistry	2,000,000
University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University – Joint Millennium Campus	2,000,000
University of North Carolina at Wilmington – School of Nursing	2,600,000
Winston-Salem State University – Laboratory Facility Planning Funds	750,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	**~~$51,385,000~~ 54,960,000**"

SECTION 45. Section 30.3.(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 30.3.(a)** The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose costs are as indicated:

	Name of Project	**2005-2006**
(1)	Wilmington Harbor Deepening	$1,300,000
(2)	Manteo (Shallowbag) Bay Channel Maintenance	50,000
(3)	Wilmington Harbor Maintenance Dredging	500,000
(4)	B. Everett Jordan Water Supply Storage	100,000
(5)	John H. Kerr Reservoir Operations Evaluation	600,000
(6)	Bogue Banks Shore Protection Study (Carteret County)	75,000
(7)	Surf City/North Topsail Beach Protection Study	250,000
(8)	West Onslow Beach (Topsail)	100,000
(9)	Wrightsville Beach Nourishment	580,000
(10)	Hurricane Stream Restoration – Western North Carolina	2,000,000
(11)	Swan Quarter (Hyde County) Flood Control Dikes	100,000
(12)	Ocracoke NCCAT Estuarine Shoreline Protection	1,500,000
(13)	Far Creek Maintenance Dredging	120,000
(14)	Belhaven Harbor Environmental Improvements	250,000
(15)	Lower Lockwoods Folly River	286,000
(16)	Walters Slough Maintenance Dredging	122,000
(17)	Hurricane Isabel Emergency Stream Cleanup – Northeastern North Carolina	1,370,000
(18)	State-Local Projects	2,000,000
(19)	Princeville Flood Control	250,000
(20)	Currituck Sound Water Management Study	300,000
(21)	Aquatic Weed Control, Lake Gaston and Statewide	375,000
(22)	Tar River and Pamlico Sound Feasibility Study	100,000
(23)	State Sponsored Dredging Contingency	2,500,000
(24)	North Carolina Oyster Habitat Restoration	50,000
(25)	Emergency Flood Control Projects	187,000
(26)	Projected Feasibility Studies	100,000
(27)	Planning Assistance to Communities	95,000
(28)	Neuse Regional Water & Sewer Authority	3,600,000
TOTALS		**~~$15,260,000~~18,860,000**"

SECTION 46. S.L. 2005-276 is amended by adding a new section to read:

"**SECTION 36.2.(a)** G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is ~~one dollar ($1.00)~~ three dollars ($3.00) or more may designate on his or her income tax return that ~~one dollar ($1.00)~~ three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is ~~two dollars ($2.00)~~ six dollars ($6.00) or more, each spouse may designate on the income tax return that ~~one dollar ($1.00)~~ three dollars ($3.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party,

those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term "political party" means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.

(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

SECTION 36.2.(b) This section is effective for taxable years beginning on or after January 1, 2006."

SECTION 47.(a) G.S. 105-130.47(a), as enacted by Section 39.1 of S.L. 2005-276, is amended by adding a new subdivision to read:

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

…

(2a) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage."

SECTION 47.(b) G.S. 105-130.47(f), as enacted by Section 39.1 of S.L. 2005-276, reads as rewritten:

"(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars ($7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or live sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production."

SECTION 47.(c) G.S. 105-151.29(a), as enacted by Section 39.1 of S.L. 2005-276, is amended by adding a new subdivision to read:

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

…

(2a) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are

presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage."

SECTION 47.(d) G.S. 105-151.29(f), as enacted by Section 39.1 of S.L. 2005-276, reads as rewritten:

"(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars ($7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or live sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production."

SECTION 47.(e) This section is effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005.

SECTION 48.(a) G.S. 74-24.16(d), as enacted by Section 42.2.(a) of S.L. 2005-276, reads as rewritten:

"(d) The Commissioner may establish fees not to exceed fifty dollars ($50.00) for each person participating in education and training programs provided by the Department of Labor ~~to increase the number and competence of personnel engaged in the field of occupational safety and health.~~ pursuant to this section."

SECTION 48.(b) This section becomes effective September 1, 2005.

SECTION 49. Section 43.3.(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 43.3.(b)** This section is effective for taxes imposed for taxable years beginning on or after ~~July 1, 2005.~~ July 1, 2006."

SECTION 50. Notwithstanding the provisions of G.S. 143-23, the Director of the Budget may transfer funds appropriated to non-State entities in S.L. 2005-276 between programs and purposes within a department, institution, or other spending agency for purposes of achieving efficient fiscal management. This section shall apply only to appropriations that were set out in the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, dated August 8, 2005, but not set out in either the Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets, dated May 3, 2005 or the House Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets, dated June 15, 2005.

SECTION 50A. Section 14.14 of S.L. 2005-276 is repealed.

SECTION 51. Except as otherwise provided in this act, this act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 30th day of August, 2005.

Became law upon approval of the Governor at 12:26 p.m. on the 31st day of August, 2005.

H.B. 1060 **Session Law 2005-346**

AN ACT TO CHANGE THE DEFINITION OF "CRITICAL ACCESS HOSPITAL" TO CONFORM TO FEDERAL LAW; AND RELATING TO REGULATION OF GASTROINTESTINAL ENDOSCOPY ROOMS IN LICENSED HEALTH SERVICE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-76(1a) reads as rewritten:

"§ **131E-76. Definitions.**

As used in this article, unless otherwise specified:

…

(1a) "Critical access hospital" means a hospital which has been designated as a critical access hospital by the North Carolina Department of Health and Human Services, Office of Research, Demonstrations and Rural Health Development. To be designated as a critical access hospital under this subdivision, the hospital must ~~meet the requirements of federal law for certification as a critical access hospital.~~be certified as a critical access hospital pursuant to 42 CFR Part 485 Subpart F. The North Carolina Department of Health and Human Services, Office of Research, Demonstrations, and Rural Health Development may designate a hospital located in a Metropolitan Statistical Area as a rural hospital for the purposes of the critical access hospital program if the hospital is located in a county with twenty-five percent (25%) or more rural residents as defined by the most recent United States decennial census."

SECTION 2. G.S. 131E-76 is amended by inserting the following new subdivisions, in alphabetical order, to read:

"§ **131E-76. Definitions.**

As used in this article, unless otherwise specified:

…

(8) 'Gastrointestinal endoscopy room' means a room used for the performance of procedures that require the insertion of a flexible endoscope into a gastrointestinal orifice to visualize the gastrointestinal lining and adjacent organs for diagnostic or therapeutic purposes.

(9) 'Operating room' means a room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room."

SECTION 3. G.S. 131E-77(e) reads as rewritten:

"(e) The Department shall issue the license to the operator of the hospital who shall not transfer or assign it except with the written approval of the Department. The license shall designate the number and types of inpatient beds, the number of operating rooms, and the number of gastrointestinal endoscopy rooms."

SECTION 4. G.S. 131E-146 reads as rewritten:

"§ **131E-146. Definitions.**

As used in this Part, unless otherwise specified:

(1) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room as defined in subdivision (1c) of this section or at least one gastrointestinal endoscopy room as defined in subdivision (1b) of this section and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part 4, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility.

(1a) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to ~~surgery,~~surgery or gastrointestinal endoscopy, to be medically unnecessary.

(1b) "Gastrointestinal endoscopy room" means a room used for the performance of procedures that require the insertion of a flexible endoscope into a gastrointestinal orifice to visualize the gastrointestinal lining and adjacent organs for diagnostic or therapeutic purposes.

(1c) "Operating room" means a room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.

(2) "Commission" means the North Carolina Medical Care Commission."

SECTION 5. G.S. 131E-175 is amended by adding the following new subdivisions to read:

"§ **131E-175. Findings of fact.**

The General Assembly of North Carolina makes the following findings:

…

(11) That physicians providing gastrointestinal endoscopy services in unlicensed settings should be given an opportunity to obtain a license to provide those services to ensure the safety of patients and the provision of quality care.

(12) That demand for gastrointestinal endoscopy services is increasing at a substantially faster rate than the general population given the procedure is recognized as a highly effective means to diagnose and prevent cancer."

SECTION 6.(a) G.S. 131E-176(1b) and 131E-176(1c) read as rewritten:

"§ **131E-176. Definitions.**

…

(1b) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room or gastrointestinal endoscopy room, as defined in Article 5 Part 1 and Article 6, Part 4 of this Chapter, and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision ~~(1b)~~ (1c) of this section and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.

(1c) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to ~~surgery,~~surgery or gastrointestinal endoscopy, to be medically unnecessary."

SECTION 6.(b) G.S. 131E-176(16)u. reads as rewritten:

"(16) "New institutional health services" means any of the following:

…

u. The construction, development, establishment, increase in the number, or relocation of an operating room or ~~operating rooms,~~gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or ~~operating rooms~~ gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room ~~is or operating rooms are~~ or gastrointestinal endoscopy room is currently located."

SECTION 6.(c) G.S. 131E-176(16) is amended by adding the following new sub-subdivision to read:

"v. The change in designation, in a licensed health service facility, of an operating room to a gastrointestinal endoscopy room or change in designation of a gastrointestinal endoscopy room to an operating room that results in a different number of each type of room than is reflected on the health service facility's license in effect as of January 1, 2005."

SECTION 6.(d) G.S. 131E-176 is amended by adding the following new subdivisions to read:

"(7d) 'Gastrointestinal endoscopy room' means a room used for the performance of procedures that require the insertion of a flexible endoscope into a gastrointestinal orifice to visualize the gastrointestinal lining and adjacent organs for diagnostic or therapeutic purposes.

(18c) 'Operating room' means a room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room."

SECTION 7. G.S. 131E-178(a) reads as rewritten:

"(a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department; provided, however, ~~no hospital licensed pursuant to Article 5 of this Chapter that was established to serve a minority population that would not otherwise have been served and that continues to serve a minority population may be required to obtain a certificate of need for transferring up to 65 beds to nursing care facility beds.~~no person who provides gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy rooms located in a nonlicensed setting, shall be required to obtain a certificate of need to license that setting as an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms, provided that:

(1) The license application is postmarked for delivery to the Division of Facility Services by December 31, 2006;

(2) The applicant verifies, by affidavit submitted to the Division of Facility Services within 60 days of the effective date of this act, that the facility is in operation as of the effective date of this act or that the completed application for the building permit for the facility was submitted by the effective date of this act;

(3) The facility has been accredited by The Accreditation Association for Ambulatory Health Care, The Joint Commission on Accreditation of Healthcare Organizations, or The American Association for Accreditation of Ambulatory Surgical Facilities by the time the license application is postmarked for delivery to the Division of Facility Services of the Department; and

(4) The license application includes a commitment and plan for serving indigent and medically underserved populations.

All other persons proposing to obtain a license to establish an ambulatory surgical facility for the provision of gastrointestinal endoscopy procedures shall be required to obtain a certificate of need. The annual State Medical Facilities Plan shall not include policies or need determinations that limit the number of gastrointestinal endoscopy rooms that may be approved."

SECTION 8. G.S. 131E-182(a), as amended by Senate Bill 740, 2005 General Assembly, reads as rewritten:

"(a) The Department in its rules shall establish schedules for submission and review of completed applications. The schedules shall provide that applications for similar proposals in the same service area will be reviewed together. However, there shall not be a review scheduled prior to February 1, 2006, for submission and review of certificate of need applications that propose an increase in the number of licensed

gastrointestinal endoscopy rooms. An applicant for a certificate of need to establish a licensed gastrointestinal endoscopy room shall show that it is performing or reasonably projects to perform at least 1,500 gastrointestinal endoscopy procedures per gastrointestinal endoscopy room per year."

SECTION 9. Nothing in Sections 2 through 10 of this act shall be construed to represent legislative intent as to the circumstances under which Medicare or Medicaid certification may be obtained for a provider of ambulatory surgery services.

SECTION 10. This act is effective when it becomes law. Section 8 of this act expires on the effective date of administrative rules adopted consistent with the provisions of this act regarding the number of gastrointestinal endoscopy procedures performed or projected to be performed.

In the General Assembly read three times and ratified this the 29th day of August, 2005.

Became law upon approval of the Governor at 12:28 p.m. on the 31st day of August, 2005.

H.B. 766 **Session Law 2005-347**

AN ACT TO ENHANCE LAWS RELATED TO THE PASSENGER TRAMWAY SAFETY ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-117 reads as rewritten:

"§ **95-117. Definitions.**

Each word or term defined in this Article has the meaning indicated in this section, unless a different meaning is plainly required by the context.

(1) 'Commissioner' means the Commissioner of Labor of the State of North Carolina.

(2) 'Industry' means activities of all those persons in the State who own, manage, or direct the operation of passenger tramways.

(3) 'Operator' means any person, firm, corporation, or organization which owns, manages, or directs the operation of a passenger tramway. 'Operator' may apply to the State or any political subdivision or instrumentality thereof.

(4) 'Passenger tramway' means a device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. 'Passenger tramway' shall include the following devices:

a. 'Chairlift,' a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

b. 'Conveyor,' a type of transportation on which passengers are transported uphill on a flexible moving element (conveyor belt) that travels uphill on one path and generally returns underneath the uphill portion.

~~b.~~c. 'J bar, T bar or platter pull,' so-called and similar types of devices or means of transportation which pull skiers riding on

skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

~~c.~~d. 'Multicar aerial passenger tramway,' a device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar device;

~~d.~~e. 'Rope tow,' a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar devices;

~~e.~~f. 'Skimobile,' a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar device;

~~f.~~g. 'Two-car aerial passenger tramway,' a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device."

SECTION 2. G.S. 95-118 reads as rewritten:

"§ **95-118. Registration ~~required.~~ required; application procedures.**

~~No passenger tramway shall be operated in this State unless it has been registered by the Commissioner of Labor. On or before November 1 in each year, every operator of a passenger tramway shall apply to the Commissioner of Labor, on forms prepared by said Commissioner, for registration of the passenger tramway which such operator owns or manages, or the operation of which he directs.~~

(a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid registration certificate.

(b) Operators of devices subject to the provisions of this Article shall apply to the Commissioner of Labor, on forms provided by the Commissioner, for registration of the devices that the operator owns or manages, or the operation of which the operator directs. The application shall contain ~~such~~ information ~~as~~ that the Commissioner may reasonably require in order for ~~him~~ the Commissioner to determine whether the passenger tramway sought to be registered by ~~such~~ the operator ~~comply~~ complies with the intent of this Article and the rules ~~and regulations promulgated~~ adopted by the ~~Commissioner as hereinafter provided.~~Commissioner."

SECTION 3. G.S. 95-119 reads as rewritten:

"§ **95-119. ~~Registration criteria and procedure.~~Certification criteria; procedures; display of certificate.**

~~The Commissioner shall issue to the applying operator without delay a registration certificate for each passenger tramway owned, managed, or the operation of which is directed by such operator when the Commissioner is satisfied:~~

~~(1) That the facts stated in the application are sufficient to enable the Commissioner to fulfill his duties under this Article; and~~

~~(2) That each such passenger tramway sought to be registered complies with the rules and regulations of the Commissioner promulgated pursuant to the provisions of this Article.~~

~~(3) In order to satisfy himself that the conditions described in subdivisions (1) and (2) of this section have been fulfilled, the Commissioner may~~

~~cause to be made such inspections hereinafter described as he may reasonably deem necessary.~~

~~(4) When an operator installs a passenger tramway subsequent to November 1, of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the Commissioner shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this Article.~~

~~(5) Each registration shall expire on October 31, next following the day of issue. Each operator shall cause the registration certificate for each passenger tramway thus registered to be displayed prominently at the place where passengers are loaded thereon.~~

(a) A registration certificate shall be issued without delay when the Commissioner is satisfied that the facts stated in the application are sufficient to enable the Commissioner to fulfill his or her duties under this Article and that the device sought to be registered complies with the rules adopted pursuant to this Article. Each registration certificate shall expire on October 31 of the year next following the date of issuance.

(b) The Commissioner may conduct any inspections necessary to determine whether the device sought to be registered complies with the intent of this Article and the rules adopted pursuant to this Article.

(c) The registration certificate for each device subject to the provisions of this Article shall be displayed prominently at the place where passengers are loaded onto the device."

SECTION 4. G.S. 95-120 reads as rewritten:

"§ **95-120. Powers and duties of the Commissioner.**

In addition to all other powers and duties conferred and imposed upon the Commissioner by this Article, the Commissioner shall have and exercise the following powers and duties:

(1) To ~~adopt and enforce reasonable rules and regulations relating to public safety in the construction, operation, and maintenance of passenger tramways.~~adopt, modify, or revoke the rules necessary for carrying out the provisions of this Article, including those governing the design, construction, installation, operation, use, and maintenance of devices subject to the provisions of this Article. The rules ~~and regulations authorized~~ adopted under this section shall conform as nearly as possible to the standards contained ~~for mechanical engineering aerial passenger tramways safety code as adopted and used by the U.S.A. Standards Institute, B77.1-1960, with addenda B77.1(a)- 1963, and B77.1(b)- 1965, and as said safety code from [for] tramways may be amended from time to time, and in the formulation of said regulations the Commissioner may use and adopt any other safety code for tramways as issued by recognized scientific and mechanical societies. The said regulations shall not be discriminatory in their application to operators of passenger tramways, and the procedures of the Commissioner shall be as provided in this Article;~~in the B77.1 – American National Standards Safety Requirements for

Aerial Passenger Tramways and with good engineering and safety standards, formulas, and practices.

(1a) To enforce the rules adopted under this Article.

(1b) To grant exceptions from the requirements of the rules adopted under this Article and to permit the use of other devices when the exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or damage to property.

(2) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the Commissioner, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any ~~inquiry;~~inquiry.

(3) To approve, deny, revoke, and renew the ~~registrations provided for in this Article and the procedures of the Commissioner with respect thereto shall be as provided in this Article with respect to the issuance of certificates or licenses;~~registration certificates in accordance with the rules adopted pursuant to this Article.

(4) To ~~cause the prosecution and the institution of actions for injunctions of all persons violating the provisions of this Article and to incur the necessary expenses thereof;~~institute civil actions for injunctive or other relief against violators of this Article.

(5) To cause the seal of the Commissioner of Labor to be affixed to all registrations issued by ~~him,~~ the Commissioner, and to employ, within the funds available to ~~him,~~ the Commissioner, and prescribe the duties of ~~all such~~ the personnel as the Commissioner may deem necessary in the administration of this Article.

(6) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for the purposes of inspections and testing.

(7) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of the accident. The Commissioner shall have full subpoena powers in conducting the investigations.

(8) To coordinate enforcement and inspection activity relative to equipment, devices, and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the operator, owner, or employer.

(9) To establish fees not to exceed one hundred thirty-seven dollars ($137.00) for the inspection and issuance of registration certificates for devices that are in use and subject to this Article."

SECTION 5. Article 15 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ **95-120.1. Liability insurance.**

(a) No person shall operate a device subject to the provisions of this Article, unless at the time of operation, there is in existence:

(1) A contract of insurance providing coverage of not less than one million dollars ($1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the device; or

(2) A contract of insurance providing coverage of not less than five hundred thousand dollars ($500,000) per occurrence against liability

for injury to persons or property arising out of the operation or use of the devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars ($275,000).

The insurance contract to be provided must be made by an insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State.

(b) The Commissioner shall not issue a certificate of registration until the operator or the operator's authorized agent provides proof of the required contract of insurance.

(c) The Commissioner may request from the operator of a device subject to the provisions of this Article or the operator's authorized agent, proof of the required contract of insurance, and upon failure of the operator or authorized agent to provide proof of insurance, the Commissioner shall have the power to prevent the commencement of or to stop the operation of the device until such time as proof is provided."

SECTION 6. G.S. 95-107 reads as rewritten:

"§ **95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~G.S. 95-110.5, 95-111.4, and 95-120 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 7. G.S. 95-108 reads as rewritten:

"§ **95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~G.S. 95-110.5, 95-111.4, and 95-120 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:21 p.m. on the 7th day of September, 2005.

H.B. 1518 **Session Law 2005-348**

AN ACT TO REQUIRE HOLDERS OF CERTAIN ABC PERMITS TO RECYCLE ALL RECYCLABLE CONTAINERS OF ALL BEVERAGES SOLD AT RETAIL ON THE PREMISES AND TO PROHIBIT THE DISPOSAL OF THOSE CONTAINERS IN LANDFILLS OR BY INCINERATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1006.1. Additional requirement for certain permittees to recycle beverage containers.**

Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall separate, store, and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises. A permittee has satisfied the requirements of this subsection if it implements a recycling program that meets the minimum standards of the model recycling program developed by the Commission pursuant to G.S. 130A-309.14(m)."

SECTION 2. G.S. 130A-309.14 is amended by adding a new subsection to read:

"(m) The Alcoholic Beverage Control Commission, with the assistance of the Department, shall develop a model recycling program for holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits under G.S. 18B-1001 that are required to recycle beverage containers under G.S. 18B-1006.1. The model program shall provide for the separation, storage, and collection for recycling of all beverage containers that are required to be recycled under G.S. 18B-1006.1 and shall provide alternatives that reflect variations in local circumstances across the State. The Alcoholic Beverage Control Commission may adopt rules to comply with this section."

SECTION 3. Subsections (f) and (f1) of G.S. 130A-309.10 read as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.
(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). ~~The prohibition against landfilling~~ The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) Beverage containers that are required to be recycled under G.S. 18B-1006.1.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1."

SECTION 4. This act becomes effective January 1, 2008.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:26 p.m. on the 7th day of September, 2005.

H.B. 670 **Session Law 2005-349**

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. Any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea."

SECTION 2. G.S. 20-4.01(12b) reads as rewritten:

"(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of

that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used."

SECTION 3. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial or other motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 4. G.S. 20-7(a) reads as rewritten:

"(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. – A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. – A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. – A Class C license authorizes the holder to drive any of the following:

a. A Class C motor vehicle that is not a commercial motor vehicle.

b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other ~~A~~ new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident."

SECTION 5. G.S. 20-15 reads as rewritten:

"§ **20-15. Authority of Division to cancel ~~license.~~license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division.

(c) Any person whose license is canceled under this section for failure to give the required or correct information, or for committing fraud, in an application for a commercial drivers license shall be prohibited from reapplying for a commercial drivers license for a period of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4). "

SECTION 6. G.S. 20-17.4 reads as rewritten:

"§ **20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one ~~year.~~year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

(1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run. ~~run, involving a commercial motor vehicle driven by the person.~~

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was ~~used.~~used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2. ~~G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.~~

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. – A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is ~~revoked.~~revoked, suspended, or cancelled.

(g) Violation of Out-of-Service Order. – Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. – Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

(1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. – The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State or person transferring to this State upon receiving notice of the person's conviction or Administrative Per Se Notice in another state for an offense that, if committed in this State, would be grounds for ~~disqualification.~~ disqualification, even if the offense occurred in another jurisdiction prior to being licensed in this State where no action had been taken at that time in the other jurisdiction. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. – Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license.

(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.

(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.

(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any

combination of railroad grade crossing offenses listed in this subsection.

(m) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 7. G.S. 20-36 reads as rewritten:

"§ **20-36. Ten-year-old convictions not considered.**

~~Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle,~~ Except for offenses occurring in a commercial motor vehicle, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 8. G.S. 20-37.13 reads as rewritten:

"§ **20-37.13. Commercial drivers license qualification standards.**

(a) No person shall be issued a commercial drivers license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge test and a skills test for driving a commercial motor vehicle that comply with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts F, G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

For the purpose of skills testing and determining commercial drivers license classification, only the manufacturer's GVWR shall be used.

The tests shall be prescribed and conducted by the Division. Provided, a person who is at least 18 years of age may be issued a commercial drivers license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R. § 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to October 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial drivers license if:

(1) For an application submitted by April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application done any of the following and for an application submitted after April 1, 1992, the applicant has not, and certifies that he has not, at any time during the two years preceding April 1, 1992:
   a. Had more than one drivers license, except during the 10-day period beginning on the date he is issued a drivers license, or unless, prior to December 31, 1989, he was required to have more than one license by a State law enacted prior to June 1, 1986;
   b. Had any drivers license or driving privilege suspended, revoked, or cancelled;
   c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;
   d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or
   e. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:
   a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or
   b. Has operated for the relevant two-year period under subpart (1)a. of this subsection, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial drivers license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his drivers license is suspended, revoked, or cancelled in any state; nor shall a commercial drivers license be issued unless the person who has applied for the license first surrenders all other drivers licenses issued by the Division or by another state. If a person surrenders a drivers license issued by another state, the Division must return the license to the issuing state for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a regular Class C drivers license and has passed the knowledge test for the class and type of commercial motor vehicle the individual will be driving. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period. The fee for a commercial driver learner's permit is the same as the fee set by G.S. 20-7 for a regular learner's permit. G.S. 20-7(m) governs the issuance of a restricted instruction permit for a prospective school bus driver."

SECTION 9. G.S. 20-37.16 reads as rewritten:

"§ **20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials

To qualify for any of the above endorsements, an applicant shall pass a knowledge test. To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(c1) The test for an S endorsement shall be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled, or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

(f) For the purposes of this section, the term "school bus" has the same meaning as in 49 C.F.R. § 383.5."

SECTION 10. G.S. 20-37.21 reads as rewritten:

"§ **20-37.21. Penalties.**

(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). In addition, upon conviction, the employer shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than eleven thousand dollars ($11,000).

(d) An employer who knowingly allows, requires, permits, or otherwise authorizes an employee to violate any railroad grade requirements contained in G.S. 20-142.1 through G.S. 20-142.5 shall pay a civil penalty of not more than ten thousand dollars ($10,000)."

SECTION 11. G.S. 20-141(j3) reads as rewritten:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed ~~in excess~~ of 15 miles per hour or more above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

SECTION 12. G.S. 20-142.1 reads as rewritten:

"§ **20-142.1. Obedience to railroad signal.**

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 13. G.S. 20-142.2 reads as rewritten:

"§ **20-142.2. Vehicles stop at certain grade crossing.**

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se. An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 14. G.S. 20-142.3 reads as rewritten:

"§ **20-142.3. Certain vehicles must stop at railroad grade crossing.**

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d), (e) Repealed by Session Laws 2001-487, s. 50(g).

(e) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 15. G.S. 20-142.4 reads as rewritten:

"§ **20-142.4. Moving heavy equipment at railroad grade crossing.**

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:

(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;

(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and

(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend "Exempt".

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(g) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 16. G.S. 20-142.5 reads as rewritten:

"§ **20-142.5. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 17. This act becomes effective September 30, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:28 p.m. on the 7th day of September, 2005.

H.B. 1500 **Session Law 2005-350**

AN ACT TO AMEND THE REQUIREMENTS TO HOLD A WINE-TASTING PERMIT AND PROVIDE FOR THE ISSUANCE OF WINE SHOP PERMITS, TO AMEND LAWS CONCERNING COMMUNITY COLLEGE VITICULTURE/ENOLOGY PROGRAMS, WINE DISTRIBUTION AGREEMENTS AND BEER FRANCHISE AGREEMENTS, AND TO PROVIDE FOR THE BIOMETRIC IDENTIFICATION OF PURCHASERS OF ALCOHOL AND TOBACCO PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001(15) reads as rewritten:

"(15) Wine-Tasting Permit. – A wine-tasting permit authorizes wine tastings on ~~the~~ a premises ~~conducted and supervised by the permittee.~~ holding a retail permit, by the retail permit holder or his employee. A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business. Any person pouring wine at a wine tasting shall be at least 21 years of age.

a. Representatives of the winery, which produced the wine, ~~or~~ the wine ~~producer~~ producer, a wholesaler, or a wholesaler's employee may assist with the ~~tastings in a manner consistent with existing law.~~ tasting. Assisting with a wine tasting includes:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the wine tasting.

b. When a representative of the winery that produced the wine, the wine producer, a wine wholesaler, or a wine wholesaler's employee assists in a wine tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the wine tasting.
2. A retail permit holder's employee shall not supervise more than three wine-tasting areas.
3. No more than six wines may be tasted at any one tasting area.
4. The wine tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the wine tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of wine, and that the tastings are not used by industry members for unlawful inducements to retail permit

~~holders, and do not violate existing rules.~~holders. Except for purposes of this subsection, the holder of a wine-tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a wine-tasting permit."

SECTION 2.(a) G.S. 18B-1001 is amended by adding a new subdivision to read:

"(16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass."

SECTION 2.(b) G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.

(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
(36) Wine shipper permit – $100.00.
(37) Wine shop permit – $100.00."

SECTION 2.(c) G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. – Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each wine shop permit shall be five hundred dollars ($500.00), and the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be seven hundred fifty dollars ($750.00). A renewal fee shall not be refundable."

SECTION 3.(a) G.S. 18B-1114.4 reads as rewritten:

"§ **18B-1114.4. Viticulture/Enology course authorization.**

(a) Authorization. – The holder of a viticulture/enology course authorization may:

(1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.
(2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.
(3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(b) Limitation. – Authorization for a viticulture/enology course shall be granted by the Commission only for a community college or college that offers a viticulture/enology program as a part of its curriculum offerings for students of the school. ~~No retail sales of wine shall be made by the students, instructor, or school.~~ Wines may be manufactured only from grapes grown in a viticulture/enology course ~~vineyard, not to exceed five acres,~~ vineyard that is located on the school's campus or the school's contracted or leased property.

(c) The holder of a viticulture/enology course authorization who obtains a wine wholesaler permit under G.S. 18B-1107 subject to the limitation in subsection (a) of this

section may ~~manufacture wines from grapes grown by others until June 30, 2004. Otherwise, wine may be manufactured only as provided in subsection (b) of this section.~~ obtain a winery special event permit under G.S. 18B-1114.1, and where the permit is valid may participate in approved events and sell at retail at those events any wine produced incident to the operation of the viticulture/enology program. The holder of a viticulture/enology course authorization may participate in not more than six winery special events within a 12-month period and may sell up to 25 cases of wine at each event. Net proceeds from the program's retail sale of wine pursuant to this subsection shall be retained by the school and used for support of the viticulture/enology program.

(d) The holder of a viticulture/enology course authorization shall not be considered a winery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3.(b) G.S. 18B-1114.1(a) reads as rewritten:

"(a) Authorization. – The holder of an unfortified winery permit, a limited winery permit, a viticulture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission."

SECTION 4. G.S. 18B-1200 reads as rewritten:

"§ **18B-1200. Construction; findings and ~~purpose.~~purpose; exceptions.**

(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

(1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

(2) To protect wine wholesalers against unfair treatment by wineries;

(3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and

(4) To govern all wine wholesalerships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207."

SECTION 5. G.S. 18B-1302(b) reads as rewritten:

"(b) Existence of Agreement. – A franchise agreement as described in subsection (a) exists when:

(1) The supplier has shipped malt beverages to a wholesaler or accepted an order for malt beverages from the wholesaler;

(2) A wholesaler has paid or the supplier has accepted payment for an order of malt beverages intended for sale within this State;

(3) The supplier and wholesaler have filed with the Commission a distribution agreement as required by G.S. 18B-1303; or

(4) A supplier ~~purchases~~ acquires the right to manufacture a malt beverage product, or the trade name for such product, or the right to distribute a product, ~~from another supplier with whom the~~ for which a wholesaler has a franchise agreement."

SECTION 6.(a) G.S. 18B-302(d) is amended by adding a new subdivision to read:

"(3) Shows that at the time of purchase, the purchaser utilized a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document."

SECTION 6.(b) G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. – If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS

THE PURCHASE OF TOBACCO PRODUCTS

BY PERSONS UNDER THE AGE OF 18.

PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. ~~Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, or that the defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02, shall be a defense to any action brought under this subsection.~~ Retail distributors of tobacco products shall train their sales employees in the requirements of

this law. Proof of any of the following shall be a defense to any action brought under this subsection:

(1) The defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer.

(2) The defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02.

(3) The defendant relied on a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the card."

SECTION 7. This act is effective when it becomes law. Section 4 of this act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:30 p.m. on the 7th day of September, 2005.

H.B. 967 **Session Law 2005-351**

AN ACT TO PROVIDE THAT IF A VALIDLY EXECUTED HEALTH CARE POWER OF ATTORNEY AUTHORIZES THE HEALTH CARE AGENT TO EXERCISE RIGHTS WITH RESPECT TO ANATOMICAL GIFTS, AUTOPSY, OR DISPOSITION OF THE PRINCIPAL'S REMAINS, THE AUTHORIZING PROVISION WILL CONTINUE IN EFFECT AFTER THE DEATH OF THE PRINCIPAL FOR PURPOSES OF EXERCISING THE AUTHORIZED RIGHTS, TO DEFINE "DISPOSITION OF REMAINS", AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-16 reads as rewritten:

"§ **32A-16. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Disposition of remains" means the decision to bury or cremate human remains as defined in G.S. 90-210.121(17).

~~(1)~~(1a) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including, life-sustaining procedures. "Health care" includes mental health treatment as defined in subdivision (8) of this section.

(2) "Health care agent" means the person appointed as a health care attorney-in-fact.

(3) "Health care power of attorney" means a written instrument, signed in the presence of two qualified witnesses, and acknowledged before a

notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal, and which substantially meets the requirements of this Article.

(4) "Life-sustaining procedures" are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.

(5) "Principal" means the person making the health care power of attorney.

(6) "Qualified witness" means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor an employee of the attending physician or mental health treatment provider, nor an employee of a health facility in which the principal is a patient, nor an employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

(7) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument as defined in G.S. 122C-72(1) pursuant to which the principal makes a declaration of instructions, information, and preferences regarding mental health treatment.

(8) "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" includes, but is not limited to, electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness."

SECTION 2. G.S. 32A-20(b) reads as rewritten:

"§ **32A-20. Effectiveness and duration; revocation.**

…

(b) ~~A~~ Except for purposes of exercising authority granted by a health care power of attorney with respect to anatomical gifts, autopsy, or disposition of remains as provided in G.S. 32A-19(b), a health care power of attorney is revoked by the death of the principal. A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions. The principal may exercise this right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent health care power of attorney, or in any other manner by which the principal is able to communicate an intent to revoke. This revocation becomes effective only

upon communication by the principal to each health care agent named in the revoked health care power of attorney and to the principal's attending physician or eligible psychologist.

…."

SECTION 3. G.S. 32A-25 reads as rewritten:

"§ **32A-25. Statutory form health care power of attorney.**

The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

(Notice: This document gives the person you designate your health care agent broad powers to make health care decisions, including mental health treatment decisions, for you. Except to the extent that you express specific limitations or restrictions on the authority of your health care agent, this power includes the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive, admit you to a facility, and administer certain treatments and medications. This power exists only as to those health care decisions for which you are unable to give informed consent.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will have to use due care to act in your best interests and in accordance with this document. For mental health treatment decisions, your health care agent will act according to how the health care agent believes you would act if you were making the decision. Because the powers granted by this document are broad and sweeping, you should discuss your wishes concerning life-sustaining procedures, mental health treatment, and other health care decisions with your health care agent.

Use of this form in the creation of a health care power of attorney is lawful and is authorized pursuant to North Carolina law. However, use of this form is an optional and nonexclusive method for creating a health care power of attorney and North Carolina law does not bar the use of any other or different form of power of attorney for health care that meets the statutory requirements.)

1. Designation of health care agent.

I, _____, being of sound mind, hereby appoint

Name: _____

Home Address: _____

Home Telephone Number _____Work Telephone Number_____

as my health care attorney-in-fact (herein referred to as my "health care agent") to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document.

If the person named as my health care agent is not reasonably available or is unable or unwilling to act as my agent, then I appoint the following persons (each to act alone and successively, in the order named), to serve in that capacity: (Optional)

A. Name: _____
Home Address: _____
Home Telephone Number _____Work Telephone Number_____

B. Name: _____
Home Address: _____
Home Telephone Number _____Work Telephone Number_____

Each successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent.

2. Effectiveness of appointment.

(Notice: This health care power of attorney may be revoked by you at any time in any manner by which you are able to communicate your intent to revoke to your health care agent and your attending physician.)

Absent revocation, the authority granted in this document shall become effective when and if the physician or physicians designated below determine that I lack sufficient understanding or capacity to make or communicate decisions relating to my health care and will continue in effect during my incapacity, until my ~~death.~~death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise the authority granted in this document for these purposes.

This determination shall be made by the following physician or physicians. For decisions related to mental health treatment, this determination shall be made by the following physician or eligible psychologist. (You may include here a designation of your choice, including your attending physician or eligible psychologist, or any other physician or eligible psychologist. You may also name two or more physicians or eligible psychologists, if desired, both of whom must make this determination before the authority granted to the health care agent becomes effective.):

_____

_____

_____

_____

3. General statement of authority granted.

Except as indicated in section 4 below, I hereby grant to my health care agent named above full power and authority to make health care decisions, including mental health treatment decisions, on my behalf, including, but not limited to, the following:

A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. To employ or discharge my health care providers.

C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution.

D. To consent to and authorize my admission to and retention in a facility for the care or treatment of mental illness.

E. To consent to and authorize the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment".

F. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.

G. To authorize the withholding or withdrawal of life-sustaining procedures when and if my physician determines that I am terminally

ill, permanently in a coma, suffer severe dementia, or am in a persistent vegetative state. Life-sustaining procedures are those forms of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions. Life-sustaining procedures do not include care necessary to provide comfort or alleviate pain.

I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY ILL, PERMANENTLY IN A COMA, SUFFER SEVERE DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE STATE.

H. To exercise any right I may have to make a disposition of any part or all of my body for medical ~~purposes,~~purposes; ~~to donate my organs, to~~ authorize an ~~autopsy,~~autopsy; to make an anatomical gift of my organs or body, or part thereof, and to direct the disposition of my remains.

I. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

4. Special provisions and limitations.

(Notice: The above grant of power is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care. If you wish to limit the scope of your health care agent's powers, you may do so in this section.)

A. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations (Here you may include any specific limitations you deem appropriate such as: your own definition of when life-sustaining treatment should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or unacceptable to you for any other reason.):

_____

_____

_____

_____

B. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you):

_____

_____

_____

_____

C. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack sufficient understanding or capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions about decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment.):

_____

_____

_____

_____

D. In exercising the authority to make decisions regarding autopsy, anatomical gifts and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, instructions regarding gifts of the body or body part, or instructions regarding burial or cremation):

_____

_____

_____

_____

5. Guardianship provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate my health care agent acting under this document to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

6. Reliance of third parties on health care agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions by my health care agent.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or act under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney

shall be superior to and binding upon my family, relatives, friends, and others.

7. Miscellaneous provisions.

A. I revoke any prior health care power of attorney.

B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.

C. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.

D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

_____ (SEAL) _____

Signature of Principal Date

9. Signatures of Witnesses.

I hereby state that the Principal, _____, being of sound mind, signed the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor an employee of the principal's attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal.

Witness: _____ Date: _____

Witness: _____ Date: _____

STATE OF NORTH CAROLINA

COUNTY OF_____

CERTIFICATE

I, _____, a Notary Public for _____ County, North Carolina, hereby certify that _____ appeared before me and swore to me and to the witnesses in my presence that this instrument is a health care power of attorney, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that _____ and _____, witnesses, appeared before me and swore that they witnessed _____ sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor an employee of a health facility in which he/she was a patient, nor an employee of a nursing home or any group-care home in which he/she resided, and (iv) they did not have a claim against him/her. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This the _____ day of _____, ____

_____
Notary Public

My Commission Expires:

_____

(A copy of this form should be given to your health care agent and any alternate named in this power of attorney, and to your physician and family members.)"

SECTION 4. G.S. 130A-389(b) reads as rewritten:

"(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the ~~autopsy and~~ autopsy, unless the deceased's health care power of attorney granted authority for such decisions to the health care agent. If the Chief Medical Examiner or a designated pathologist performs the autopsy at the request of the next of kin, the cost shall be paid by the next of kin."

SECTION 5. G.S. 130A-398 reads as rewritten:

"§ **130A-398. Limitation on right to perform autopsy.**

The right to perform an autopsy shall be limited to those cases in which:

(1) The Chief Medical Examiner or a county medical examiner, acting pursuant to G.S. 130A-389, directs that an autopsy be performed;

(2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has given written consent for an autopsy to be performed on an unclaimed body;

(3) A prosecuting officer or district attorney, acting pursuant to G.S. 15-7 in case of homicide, directs that an autopsy be performed;

(4) The decedent directs in writing prior to death that an autopsy be performed upon the occurrence of the decedent's death;

(4a) The health care agent under a health care power of attorney with authority to make decisions with respect to autopsies requests that an autopsy be performed upon the deceased principal;

(5) The personal representative of the estate of the decedent requests that an autopsy be performed upon the decedent; or

(6) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual opposition by a member of the same or prior class, authorizes an autopsy to be performed:

a. The spouse;
b. Any adult child or stepchild;
c. Any parent or stepparents;
d. Any adult sibling;
e. A guardian of the person of the decedent at the time of the decedent's death;
f. Any relative or person who accepts responsibility for final disposition of the body by other customary and lawful procedures;
g. Any person under obligation to dispose of the body."

SECTION 6. G.S. 130A-404(b) reads as rewritten:

"(b) If the decedent has not made a gift in the manner prescribed in G.S. 130A-406, then any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in G.S. 130A-405.

(1) ~~The spouse;~~The health care agent under a health care power of attorney with authority to make decisions with respect to anatomical gifts;

(2) ~~An adult child;~~The spouse;

(3) ~~Either parent;~~An adult child;

(4) ~~An adult sibling;~~Either parent;

(5) ~~A guardian of the person of the decedent at the time of decedent's death;~~An adult sibling;

(6) ~~Any other person authorized or under obligation to dispose of the body.~~A guardian of the person of the decedent at the time of decedent's death;

(7) Any other person authorized or under obligation to dispose of the body."

SECTION 7. This act becomes effective October 1, 2005, and applies to powers of attorney created before and after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:32 p.m. on the 7th day of September, 2005.

H.B. 891 **Session Law 2005-352**

AN ACT TO REGULATE THE POSSESSION OF MOTOR VEHICLE MASTER KEYS AND OTHER MOTOR VEHICLE LOCK-PICKING DEVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ **14-56.4. Preparation to commit breaking or entering into motor vehicles.**

(a) For purposes of this section:

(1) "Manipulative key" means a key, device or instrument, other than a key that is designed to operate a specific lock, that can be variably positioned and manipulated in a vehicle keyway to operate a lock or cylinder or multiple locks or cylinders, including a wiggle key, jiggle key, or rocket key.

(2) "Master key" means a key that operates all the keyed locks or cylinders in a similar type or group of locks.

(b) It is unlawful for any person to possess any motor vehicle master key, manipulative key, or other motor vehicle lock-picking device or hot wiring device, with the intent to commit any felony, larceny, or unauthorized use of a motor propelled conveyance.

(c) It is unlawful for a person to willfully buy, sell, or transfer a motor vehicle master key, manipulative key or device, key-cutting device, lock pick or lock-picking device, or hot wiring device, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle for use in any manner prohibited by this section.

(d) Violation of this section is a Class 1 misdemeanor. A second or subsequent violation of this section is a Class I felony.

(e) This section shall not apply to any person who is a dealer of new or used motor vehicles, a car rental agent, a locksmith, an employee of a towing service, an employee of an automotive repair business, a person who is lawfully repossessing a vehicle, or a state, county, or municipal law enforcement officer, when that person is acting within the scope of the person's official duties or employment. This section shall not apply to a business which has a key-cutting device located and used on the premises for the purpose of making replacement keys for the owner or person who is in lawful custody of a vehicle."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:34 p.m. on the 7th day of September, 2005.

H.B. 1318 **Session Law 2005-353**

AN ACT TO CLARIFY THE LAWS REGARDING EQUITABLE DISTRIBUTION BY REQUIRING THE COURT TO CONSIDER EVIDENCE RELATING TO BUILT-IN TAXES AND OTHER TAX CONSEQUENCES OF THE PARTIES TO A DIVORCE ACTION IN DETERMINING EQUITABLE DISTRIBUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(c)(11) reads as rewritten:

"(c) There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. The court shall consider all of the following factors under this subsection:

…

(11) The tax consequences to each ~~party.~~party, including those federal and State tax consequences that would have been incurred if the marital and divisible property had been sold or liquidated on the date of valuation. The trial court may, however, in its discretion, consider whether or when such tax consequences are reasonably likely to occur in determining the equitable value deemed appropriate for this factor.

…."

SECTION 2. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:36 p.m. on the 7th day of September, 2005.

H.B. 665 **Session Law 2005-354**

AN ACT TO AMEND THE LAWS GOVERNING HOUSEMOVERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-356 reads as rewritten:

"§ **20-356. Definitions.**

"Person" as used in this Article shall mean an individual, corporation, partnership, association or any other business entity. The word "house" as used in this Article shall mean a dwelling, building, or other structure in excess of ~~14~~ 15 feet in width; provided that neither mobile homes, nor modular homes or portions thereof, are within this definition when being transported from the manufacturer or from a licensed retail dealer location to the first set-up site. The word "Department" as used in this Article shall mean the North Carolina Department of Transportation."

SECTION 2. G.S. 20-358 reads as rewritten:

"§ **20-358. Qualifications to become licensed.**

The Department shall issue annual printed licenses to applicants meeting the following conditions:

(1) The applicant must be at least 18 years of age; present acceptable evidence of good character and show sufficient housemoving

experience on the application form furnished by the Department. Proof of creditable housemoving experience must be furnished at the time of application for those applicants not previously licensed by the Department. Housemoving experience means extensive and responsible training gained by the applicant while engaged actively and directly on a full-time basis in the moving of houses and structures on public roads and highways with at least 24 months experience. Examples of the capacity in which a person may work in gaining experience include the following in building moving operations:

a. Moving superintendent,
b. Moving foreman, and
c. General mechanic and helper in the housemoving profession or trade.

(2) Repealed by Session Laws 1981, c. 818, s. 3.

(3) The applicant must furnish proof that all of the vehicles, excluding "beams and dollies" and "hauling units," to be used in the movement of buildings, structures, or other extraordinary objects wider than ~~14~~ 15 feet have met the requirements of G.S. 20-183.2 pertaining to the equipment inspection of motor vehicles; provided that the "beams and dollies" and "hauling units" are excluded from inspection under G.S. 20-183.2 and, further, are not required to be equipped with brakes.

(4) The applicant must exhibit his federal employer's identification number.

(5) The applicant must pay an annual license fee of one hundred dollars ($100.00)."

SECTION 3. G.S. 20-359 reads as rewritten:

"§ **20-359. Effective period of license.**

A license issued hereunder shall be effective ~~for a period of one year~~ from date of issuance and expire on July 31 of each year and shall be renewable on an annual basis."

SECTION 4. G.S. 20-360 reads as rewritten:

"§ **20-360. Requirements for permit.**

(a) Persons licensed as professional housemovers shall also be required to secure a permit from the Department for every move undertaken on the State Highway System of roads; that permit shall be issued by the Department after determining that the applicant is (i) properly licensed, (ii) furnished special surety bonds as required by the Department, and (iii) complying with such other regulations as required by the Department.

(b) It shall be the duty of the applicant to see that the "beams and dollies" and "hauling units" used shall be constructed with proper material in a suitable manner and utilized so as to provide for the safety of the general public and the structure being relocated. Any violation of this duty may result in suspension or revocation of his license by the Department.

(c) A license shall not be required for ~~individuals~~ an individual owner of a towing vehicle moving their own buildings from or to property owned individually by those persons; however, a permit will be required for all moves.

(d) Licensed housemovers shall furnish front and rear certified escort vehicles on all moves, one or both of which may be a marked police, sheriff or State Highway Patrol vehicle as determined by the issuing agent, or one or two ~~private~~ properly

equipped certified escort vehicles ~~equipped with flashing amber lights~~ depending on the number of law-enforcement vehicles escorting the move; escort vehicles shall operate where possible at a distance of 300 feet from the structure being moved; that this interval will be closed in cities and other congested areas to protect other traffic from the swing of the load at corners and ~~turns and,~~ turns, and the ~~private~~ certified escort vehicles shall comply with all restrictions as provided on the permit secured for movement of the structure. ~~burn their headlights and be equipped with red flags on each side at the front; in addition, the private escort vehicles shall be equipped with a sign across the front or rear bumper bearing the legend "Wide Load" or "Oversized Load Following" or "Oversized Load Ahead," whichever is appropriate, with black letters at least 10 inches high on a yellow background.~~"

SECTION 5. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:38 p.m. on the 7th day of September, 2005.

H.B. 1491 **Session Law 2005-355**

AN ACT TO REQUIRE LOCAL BOARDS OF EDUCATION TO PROVIDE LIABILITY INSURANCE FOR SCHOOL SOCIAL WORKERS WHO TRANSPORT STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-317.1. School social workers and transporting students.**

A school social worker shall not be required to transport students without the existence of a written job description or local board policy that imposes this requirement."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. – Unless a local board of education otherwise provides for liability insurance coverage of a school social worker who is required to transport students under G.S. 115C-317.1, a local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties, only if the board reimburses the employee for the additional premium charged, up to the maximum additional amount charged to a person with up to two points assessed under the Safe Driver Incentive Plan pursuant to G.S. 58-36-65, for the increased liability limits or the added rider, or both."

SECTION 3. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:39 p.m. on the 7th day of September, 2005.

H.B. 569 **Session Law 2005-356**

AN ACT TO CREATE A JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE AND TO STUDY OTHER ISSUES RELATED TO DOMESTIC VIOLENCE AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Joint Legislative Committee on Domestic Violence.

"**§ 120-265. Creation and membership of Joint Legislative Committee on Domestic Violence.**

The Joint Legislative Committee on Domestic Violence is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2007 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

"**§ 120-266. Purposes and powers of Committee.**

(a) The Joint Legislative Committee on Domestic Violence shall examine, on a continuing basis, domestic violence issues in North Carolina in order to make ongoing recommendations to the General Assembly on ways to reduce incidences of domestic violence and to provide additional assistance to victims of domestic violence. In this examination, the Committee shall:

(1) Study the budget, programs, and policies of the Domestic Violence Commission to determine ways in which the General Assembly may improve the effectiveness of the Commission;

(2) Study and evaluate the funding sources and needs of domestic violence programs providing services to domestic violence victims and programs providing treatment to domestic violence abusers;

(3) Study legal services funding for domestic violence victims and explore additional sources of funding;

(4) Explore sources of additional funding for all domestic violence programs, including visitation centers;

(5) Examine current programs and explore new programs to provide effective services to domestic violence victims and treatment to domestic violence abusers;

(6) Examine law enforcement and judicial responses to domestic violence;

(7) Review data collected on domestic violence cases pursuant to G.S. 15A-1382.1;

(8) Study the effectiveness of the Crime Victims Rights Act as it relates to domestic violence; and

(9) Conduct any other studies, evaluations, or assessments necessary for the Committee to carry out its purpose.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"**§ 120-267. Organization of the Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Committee on Domestic Violence. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(d) The Committee cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties and may appoint non-Commission members to serve on each subcommittee as resource persons. Resource persons shall be voting member of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6."

SECTION 2. The Administrative Office of the Courts, in consultation with the Department of Correction, Division of Community Corrections, shall study and review programs in this State, and other states, that utilize Global Positioning Satellite (GPS) technology to track criminal offenders. Based upon the study and review, the Administrative Office of the Courts shall make written recommendations to the Joint Legislative Committee on Domestic Violence and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than July 1, 2006, for a pilot GPS program as a condition for pretrial release pursuant to G.S. 15A-534.1. The recommendations shall include whether the alleged victim of the charged offense should have a receiver for immediate and direct notification of a GPS tracking violation by the defendant.

SECTION 3. The Department of Correction, Division of Community Corrections, shall make a written report no later than January 1, 2007, to the Joint Legislative Committee on Domestic Violence and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on measures the Division is undertaking to address the issue of supervising domestic violence offenders.

SECTION 4. The Administrative Office of the Courts shall expand the Family Court Model to additional jurisdictions of the State, as resources allow, shall study the elements of the model that might be adopted without additional funding, and implement those elements in jurisdictions where possible. The Administrative Office of the Courts shall also study the automation of court records to allow queries on civil, criminal, and juvenile matters.

The Administrative Office of the Courts shall report to the Joint Legislative Committee on Domestic Violence and the North Carolina Courts Commission no later than January 1, 2007, on the results of the studies, the recommendations of the Administrative Office of the Courts, and any steps requiring legislative action to implement the recommendations.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:40 p.m. on the 7th day of September, 2005.

H.B. 1404 **Session Law 2005-357**

AN ACT TO AUTHORIZE LAW ENFORCEMENT OFFICERS TO SERVE PROCESS AND REVOCATION ORDERS FOR THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-45 reads as rewritten:

"§ **20-45. Seizure of documents and plates.**

(a) The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used.

(b) ~~Nothing contained herein or elsewhere shall be construed to require the Division to take possession of any certificate of title, registration card permit, license, or registration plate which has expired, been revoked, canceled or suspended or which is fictitious or which has been unlawfully or erroneously issued, or which has been unlawfully used.~~ The Division may give notice to the owner, licensee or lessee of its authority to take possession of any ~~ownership document, operator's license, or plate~~ certificate of title, registration card, permit, license, or registration plate issued by it and require that person to surrender it to the Commissioner or his officers or agents. Any person who fails to surrender the ~~ownership document, operator's license, or plate,~~certificate of title, registration card, permit, license, or registration plate or any duplicate ~~thereof~~ thereof, upon personal service of notice or within 10 days after receipt of notice by ~~mail,~~mail as provided in G.S. 20-48, shall be guilty of a Class 2 misdemeanor.

(c) Any sworn law enforcement officer with jurisdiction is authorized to seize the certificate of title, registration card, permit, license, or registration plate, if the officer has electronic or other notification from the Division that the item has been revoked or cancelled, or otherwise has probable cause to believe that the item has been revoked or cancelled under any law or statute, including G.S. 20-309(e). If a criminal proceeding relating to the item is pending, the law enforcement officer in possession of that item shall retain the item pending the entry of a final judgment by a court with jurisdiction. If there is no criminal proceeding pending, the law enforcement officer shall deliver the item to the Division.

(d) Any law enforcement officer who seizes a registration plate pursuant to this section shall report the seizure to the Division within 48 hours of the seizure."

SECTION 2. This act becomes effective December 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:40 p.m. on the 7th day of September, 2005.

S.B. 737 **Session Law 2005-358**

AN ACT AUTHORIZING CRIMINAL RECORD CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"§ **114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 5 of Chapter 153A of the General Statues is amended by adding a new section to read:

"**§ 153A-94.2. Criminal history record checks of employees permitted.**

The board of commissioners may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. 114-19.14. The local or

regional public employer may consider the results of these criminal history record checks in its hiring decisions."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:46 p.m. on the 7th day of September, 2005.

H.B. 1086 **Session Law 2005-359**

AN ACT REVISING THE JURISDICTION OF THE GENERAL ASSEMBLY POLICE AND THE OATH OF OFFICE TO REFLECT THAT CHANGE, AND TO MAKE A TECHNICAL AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-32.2 reads as rewritten:

"§ **120-32.2. ~~State Legislative Building~~ General Assembly special police.**

(a) All sworn members of the ~~State Legislative Building security force~~ General Assembly special police employed by the Legislative Services Office are special policemen, and ~~within the State legislative buildings and grounds, as defined in G.S. 120-32.1(d), they shall~~ have all the powers of policemen of ~~cities.~~ cities, within any of the following areas of jurisdiction, while on official duty:

(1) Within those areas of the City of Raleigh and of the unincorporated parts of Wake County surrounded by the innermost right-of-way of Interstate 440.

(2) In any part of the State:

a. While accompanying a member of the General Assembly who is conducting, or traveling to or from, his or her official duties.

b. While preparing for, or providing security to, a session of either or both houses of the General Assembly, or official events directly related to that session.

(b) General Assembly special police officers may arrest persons outside the areas described in subsection (a) of this section when the person arrested has committed a criminal offense within any of the areas, for which the officer could have arrested the person within that area, and the arrest is made during such person's immediate and continuous flight from that area.

(c) The ~~Legislative Building security force~~ General Assembly special police has the exclusive authority and responsibility for enforcing the parking rules of the Legislative Services Commission."

SECTION 2. G.S. 120-32.3 reads as rewritten:

"§ **120-32.3. Oath of ~~State Legislative Building~~ General Assembly special police.**

Before exercising the duties of a special policeman, each ~~State Legislative Building security~~ General Assembly special police officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, _____, do solemnly swear (or affirm) that I will well and truly execute the duties of General Assembly special policeman in the State Legislative Building and

other buildings and grounds subject to the jurisdiction of the Legislative Services Commission and in other areas designated by law, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of those buildings and ~~grounds.~~ grounds and all laws of the State of North Carolina. So help me, God.

"Sworn and subscribed to before me, this the _____ day of_____, A.D. _____"

SECTION 3. G.S. 143-166.13(a) reads as rewritten:

"§ **143-166.13. Persons entitled to benefits under Article.**

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

(1) State Government Security Officers, Department of Administration;
(2) State Correctional Officers, Department of Corrections;
(3) State Probation and Parole Officers, Department of Corrections;
(4) Sworn State Law-Enforcement Officers with the power of arrest, Department of Corrections;
(5) Alcohol Law-Enforcement Agents, Department of Crime Control and Public Safety;
(6) State Highway Patrol Officers, Department of Crime Control and Public Safety;
(7) ~~State Legislative Building~~ General Assembly Special Police, General Assembly;
(8) Sworn State Law-Enforcement Officers with the power of arrest, Department of Health and Human Services;
(9) Juvenile Justice Officers, Department of Juvenile Justice and Delinquency Prevention;
(10) Insurance Investigators, Department of Insurance;
(11) State Bureau of Investigation Officers and Agents, Department of Justice;
(12) Director and Assistant Director, License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation;
(13) Members of License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation, designated by the Commissioner of Motor Vehicles as either "inspectors" or uniformed weigh station personnel;
(14) Utilities Commission Transportation Inspectors and Special Investigators;
(15) North Carolina Ports Authority Police, Department of Commerce;
(16) Sworn State Law-Enforcement Officers with the power of arrest, Department of Environment and Natural Resources;
(17) Sworn State Law-Enforcement Officers with the power of arrest, Department of Crime Control and Public Safety.
(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue.
(19) Sworn State Law-Enforcement Officers with the power of arrest, University System."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:48 p.m. on the 7th day of September, 2005.

H.B. 829 **Session Law 2005-360**

AN ACT PERTAINING TO THE DISPLAY OF OFFICIAL GOVERNMENTAL FLAGS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 144 of the General Statutes is amended by adding a new section to read:

"**§ 144-7.1. Display of official governmental flags; public restrictions.**

(a) A county, city, consolidated city-county, or unified government shall not prohibit an official governmental flag from being flown or displayed if the official governmental flag is flown or displayed:

(1) In accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended; and

(2) Upon private or public property with the consent of either the owner of the property or of any person having lawful control of the property.

(b) Notwithstanding subsection (a) of this section, for the purpose of protecting the public health, safety, and welfare, reasonable restrictions on flag size, number of flags, location, and height of flagpoles are not prohibited, provided that such restrictions shall not discriminate against any official governmental flag in any manner.

(c) For purposes of this section, an 'official governmental flag' shall mean any of the following:

(1) The flag of the United States of America.

(2) The flag of nations recognized by the United States of America.

(3) The flag of the State of North Carolina.

(4) The flag of any state or territory of the United States.

(5) The flag of a political subdivision of any state or territory of the United States."

SECTION 2. The title of Chapter 144 of the General Statutes reads as rewritten:

"**Chapter 144.**
State Flag, Official Governmental Flags, ~~Motto~~ Motto, And Colors."

SECTION 3. This act becomes effective October 1, 2005, and applies to the construction of ordinances adopted before the effective date and to ordinances adopted on or after the effective date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:49 p.m. on the 7th day of September, 2005.

H.B. 669 **Session Law 2005-361**

AN ACT TO AMEND THE LAW CONCERNING OVERSIZE AND OVERWEIGHT VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-96 reads as rewritten:

"§ **20-96. Detaining property-hauling vehicles or vehicles regulated by the Motor Carrier Safety Regulation Unit until fines or penalties and taxes are collected.**

(a) Authority to Detain Vehicles. – A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

(5) Any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid.

(6) A property-hauling vehicle operating in violation of G.S. 20-119.

The officer may detain the vehicle until the delinquent fines or penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. – When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The motor carrier under whose authority the vehicle is being operated or the owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State shall not be liable for damage to the vehicle or loss of the property being hauled."

SECTION 2. G.S. 20-117 reads as rewritten:

"§ **20-117. Flag or light at end of load.**

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles."

SECTION 3. G.S. 20-118(e) reads as rewritten:

"(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in

subdivision (b)(1), (b)(2), or (b)(4) of this section or axle weights authorized by special permit according to G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of ~~Transportation~~ Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section or of a permitted weight under G.S. 20-119 is not punishable under G.S. 20-176.

(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this subsection."

SECTION 4. G.S. 20-119 reads as rewritten:

"§ **20-119. Special permits for vehicles of excessive ~~size,~~ size or weight; ~~weight, or number of units;~~ fees.**

(a) The Department of Transportation may, in ~~their~~ its discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight ~~or number of units~~ exceeding a maximum specified in this Article upon any highway under the

jurisdiction and for the maintenance of which the body granting the permit is responsible. However, the Department is not authorized to issue any permit to operate or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. The authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section.~~section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel.~~

(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of twelve dollars ($12.00) for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency.

(b1) Neither the Department nor the Board may require review or renewal of annual permits, with or without fee, more than once per calendar year.

(c) Nothing in this section shall require the Department of Transportation to issue any permit for any load.

(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of ~~Transportation~~ Crime Control and Public Safety may assess a ~~separate~~ civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with ~~escort vehicle requirements.~~the number of properly certified escort vehicles required.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of

house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection. In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).

(e) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S.120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

(f) The Department of Transportation shall issue rules to establish an escort driver training and certification program for escort vehicles accompanying oversize/overweight loads. Any driver operating a vehicle escorting an oversize/overweight load shall meet any training requirements and obtain certification under the rules issued pursuant to this subsection. These rules may provide for reciprocity with other states having similar escort certification programs. Certification credentials for the driver of an escort vehicle shall be carried in the vehicle and be readily available for inspection by law enforcement personnel. The escort and training certification requirements of this subsection shall not apply to the transportation of agricultural machinery until October 1, 2004. The Department of Transportation shall develop and implement an in-house training program for agricultural machinery escorts by September 1, 2004.

(g) The Department of Transportation shall issue annual overwidth permits for vehicles carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that do not exceed 14 feet in width. These permits shall be valid for unlimited movement without escorts on all State highways where the overwidth vehicles do not exceed posted bridge and load limits.

(h) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a permit valid at the time of the violation but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation, and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a permit valid at the time of the violation within 30 days of the date of the violation."

SECTION 5. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:50 p.m. on the 7th day of September, 2005.

H.B. 1465 **Session Law 2005-362**

AN ACT TO PROHIBIT THE DISPOSAL OF MOTOR VEHICLE OIL FILTERS, RIGID PLASTIC CONTAINERS, WOODEN PALLETS, AND OYSTER SHELLS IN LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-290 reads as rewritten:

"§ **130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

…

~~(18)~~(17a) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18) 'Motor vehicle oil filter' means a filter that removes impurities from the oil used to lubricate an internal combustion engine in a motor vehicle.

…

(44a) 'Wooden pallet' means a wooden object consisting of a flat or horizontal deck or platform supported by structural components that is used as a base for assembling, stacking, handling, and transporting goods."

SECTION 2. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.
(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~against landfilling~~ on disposal of whole tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) Motor vehicle oil filters.
(10) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil.
(11) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
(12) Oyster shells."

SECTION 3. G.S. 130A-309.10 is amended by adding a new subsection to read:

"(k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship."

SECTION 4. This act becomes effective 1 October 2009.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:51 p.m. on the 7th day of September, 2005.

H.B. 890 **Session Law 2005-363**

AN ACT AUTHORIZING THE COURT TO ASSESS A FEE FOR THE COSTS OF THE SERVICES OF A CRIME LABORATORY OPERATED BY A LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the

payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 2. This act becomes effective October 1, 2005, and applies to court costs assessed or collected on or after that date for offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:52 p.m. on the 7th day of September, 2005.

S.B. 606 **Session Law 2005-364**

AN ACT TO AMEND THE POWERS OF THE GLOBAL TRANSPARK DEVELOPMENT COMMISSION AND TO CHANGE THE NAME OF THE GLOBAL TRANSPARK DEVELOPMENT ZONE TO NORTH CAROLINA'S EASTERN REGION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 158 of the General Statutes reads as rewritten:

"Article 4.

"~~Global TransPark Development Zone.~~North Carolina's Eastern Region.

"§ **158-30. Title.**

This Article shall be known as the '~~Global TransPark Development Zone~~ 'North Carolina's Eastern Region Act'.

"§ **158-31. Purpose.**

The purpose of this Article is to allow the following counties, which have the potential to derive direct economic benefits from the North Carolina Global TransPark, to create a special economic development district, to be known as ~~the Global TransPark Development Zone:~~North Carolina's Eastern Region: Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson.

The purpose of North Carolina's Eastern Region ~~the Global TransPark Development Zone~~ is to promote the development of the North Carolina Global TransPark and to promote and encourage economic development within the territorial jurisdiction of the ~~Zone~~ Region by fostering or sponsoring development projects to provide land, buildings, facilities, programs, information and data systems, and infrastructure requirements for business and industry in the North Carolina Global TransPark outside of the Global TransPark Complex, and elsewhere in the ~~Zone.~~Region.

"§ **158-32. Definitions.**

The following definitions apply in this Article:

(1) Authority. – The North Carolina ~~Air Cargo Airport~~ Global TransPark Authority created under Chapter 63A of the General ~~Statutes, doing business as the North Carolina Global TransPark Authority.~~Statutes.

(2) Commission. – ~~The Global TransPark~~North Carolina's Eastern Region Development Commission, the governing body of ~~the Global TransPark Development Zone.~~North Carolina's Eastern Region.

(3) Global TransPark Complex. – The approximately four to six thousand acre site designated by the Authority for a cargo airport and related facilities in Lenoir County. The site will contain a modern airport large

enough to handle the largest aircraft and will be dedicated to the rapid movement of freight and passengers by air with intermodal connecting links with rail, highway, and water transportation facilities.

(4) North Carolina Global TransPark. – A large area surrounding and including the Global TransPark Complex, which will contain commercial and industrial sites providing attractive locations for business and industry of differing sizes and varying kinds.

(4a) Region. – North Carolina's Eastern Region, an economic development district created pursuant to this Article.

(5) Unit of local government. – A local subdivision or unit of government or a local public corporate entity, including any type of special district or public authority.

~~(6) Zone. – The Global TransPark Development Zone, an economic development district created pursuant to this Article.~~

"§ **158-33. Creation of Global TransPark Development Zone.**

(a) Resolution to Create ~~Zone.~~Region. – Any three or more of the counties listed in G.S. 158-31 may create ~~the Global TransPark Development Zone~~North Carolina's Eastern Region as provided in this section. In order to create the ~~Zone,~~Region, the governing bodies of the counties creating the ~~Zone~~ Region must first adopt, on or before October 1, 1993, substantially similar resolutions stating their intent to organize the ~~Zone~~ Region pursuant to this Article. Each resolution shall include articles of incorporation for the ~~Zone which~~Region that shall set forth the following:

(1) The name of the ~~Zone,~~Region, which shall be ~~the 'Global TransPark Development Zone'.~~' North Carolina's Eastern Region.'

(2) A statement that the ~~Zone~~ Region is organized under this Article.

(3) The names of the organizing counties known to the county adopting the resolution.

(b) Public Hearing. – Each resolution may be adopted only after a public hearing on the question, notice of which hearing has been given by publication at least once after July 25, 1993, and not less than 10 days before the date set for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, set forth the proposed articles of incorporation of the ~~Zone~~Region, and state the time and place of the public hearing to be held on the resolution. No other publication or notice of the resolution is required.

(c) Incorporation of ~~Zone.~~Region. – Each county that adopts a resolution as provided in this section shall file a certified copy of the resolution with the Secretary of State on or before October 15, 1993, together with proof of publication of notice of the hearing on the resolution. Each resolution must contain the county clerk's attestation that it was adopted by the board of commissioners. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that notices of the hearings were properly published, the Secretary of State shall file the resolutions and proofs of publication and shall issue a certificate of incorporation for the ~~Zone~~ Region under the seal of the State. The Secretary of State shall record the certificate of incorporation in an appropriate book of record in the Secretary of State's office.

(d) Effect of Incorporation. – The issuance of the certificate of incorporation by the Secretary of State shall constitute ~~the Global TransPark Development Zone~~North Carolina's Eastern Region a public body and body politic and corporate of the State. The

certificate of incorporation shall be conclusive evidence that the ~~Zone~~ Region has been duly created and established under this Article.

"§ **158-33.1. Addition of counties to ~~Zone.~~Region.**

(a) Authority. – The ~~Zone~~ Region shall allow an eligible county to participate in the ~~Zone~~ Region as provided in this section. A county is eligible to participate in the ~~Zone~~ Region under this section if G.S. 158-31 authorizes the county to create the ~~Zone,~~Region, but the county failed to adopt a resolution stating its intent to create the ~~Zone~~ Region by the October 1, 1993, deadline set in G.S. 158-33(b).

(b) Application. – The governing body of an eligible county may apply to participate in the ~~Zone~~ Region under this section by adopting a resolution to participate in the ~~Zone.~~Region. The resolution must comply with all the requirements of G.S. 158-33(a) and (b) except that it may be adopted at any time before October 1, 1994. After adopting the resolution, the county shall file a certified copy of the resolution with the ~~Global TransPark Development~~ Commission.

(c) Approval of Application. – Within one month after receipt of an application to join the ~~Zone~~ Region pursuant to this section, the Commission shall meet to consider the application. At the meeting, the Commission shall approve the application if all of the following conditions are met:

(1) The applicant is an eligible county and has adopted a resolution that complies with subsection (b) of this section.

(2) The applicant agrees to pay a fee equal to the initiation fee paid by each of the counties that originally created the ~~Zone.~~Region.

(3) The applicant agrees to make monthly payments in lieu of taxes as provided in subsection (f) of this section.

(d) Commission Resolution. – After the Commission votes to add a county to the ~~Zone,~~Region, the Commission shall adopt a resolution that states its intent to add the county and includes amended articles of incorporation for the ~~Zone~~ Region which set forth the name of the county to be added to the ~~Zone.~~Region. The Commission shall file certified copies of this resolution with the Secretary of State.

(e) Effect of Amendment. – If the Secretary of State finds that the resolution conforms to the requirements of this Article, the Secretary of State shall file the resolution, issue an amended certificate of incorporation for the ~~Zone~~ Region including the additional county, and record the amended certificate of incorporation. The amended certificate of incorporation for the ~~Zone~~ Region shall become effective on the first day of the second month after it is issued. Upon the effective date of the amended certificate of incorporation for the ~~Zone,~~ Region, the new county becomes a fully participating member of the ~~Zone.~~Region. If the Commission has levied a tax in the ~~Zone~~ Region pursuant to G.S. 158-42, that tax applies within the new county beginning on the date the amended certificate of incorporation becomes effective.

(f) Payments in Lieu of Taxes. – A county that participates in the ~~Zone~~ Region under this section is required to make monthly payments in lieu of taxes to the ~~Zone~~ Region after the expiration of the tax levied pursuant to G.S. 158-42. Each payment shall be equal to the estimated net amount of tax that would have been collected in the county under G.S. 158-42 for that month if the tax were still in effect. Each payment is due within 15 days after the end of the month in which it accrues. The county is required to make monthly payments for a period equal to the number of months that the county was not participating in the ~~Zone~~ Region while the tax was levied under G.S. 158-42. The requirement that a county make payments in lieu of taxes expires, however, on the effective date of a withdrawal from the ~~Zone~~ Region by the county. For

the purposes of this Article, payments in lieu of taxes shall be considered proceeds of the tax levied in G.S. 158-42 collected in the county making the payment.

"§ **158-34. Territorial jurisdiction of ~~Zone.~~Region.**

The territorial jurisdiction of the ~~Zone~~ Region created pursuant to this Article shall be coterminous with the boundaries of the counties participating in the ~~Zone.~~Region.

"§ **158-35. Commission membership, officers, compensation.**

(a) Commission Membership. – The governing body of the ~~Zone~~ Region is the ~~Global TransPark Development~~ Commission. The members of the Commission must be residents of the ~~Zone~~ Region and shall be appointed as follows:

(1) The board of commissioners of each county participating in the ~~Zone shall~~Region shall, in consultation with the county's local business community, appoint ~~three voting members, one of whom shall be a minority person as defined in G.S. 143-128.2(g)(2) and one of whom may be a member of the board of commissioners.~~ one member.

~~(2) The Commission may appoint up to seven voting members. By the appointment of these members, the Commission shall ensure that the voting membership of the Commission includes at least seven women and seven members of a racial minority described in G.S. 143-128.2(g)(2). The Commission shall appoint the fewest number of members necessary to achieve these minimums.~~

~~(3) Four nonvoting members shall be appointed as follows:~~

~~a. One appointed by the Chancellor of East Carolina University to represent the University.~~

~~b. One appointed by a majority vote of the presidents of the community colleges located in the Zone, to represent the community colleges.~~

~~c. One appointed by the chair of the State Ports Authority, to represent the sea ports of the State.~~

~~d. One member of the board of directors of the Global TransPark Foundation, Inc., appointed by that board.~~

(4) The General Assembly shall appoint two members to the Commission on the recommendation of the Speaker of the House of Representatives and two members on the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Governor shall appoint two members to the Commission. No two members appointed under this subdivision may be residents of the same county. The President Pro Tempore of the Senate, Speaker of the House of Representatives, and the Governor shall consult to assist in geographic diversity in those six appointments. In order to be eligible for appointment under this subdivision, a person must be a resident of the region. No person appointed under this subdivision is eligible to be chairperson or vice-chairperson.

(b) Terms. – Members of the Commission shall serve for staggered four-year terms. ~~The members appointed by the Chancellor of East Carolina University and by the chair of the State Ports Authority shall serve an initial term of two years. The members appointed by the community colleges located in the Zone and by the board of directors of the Global TransPark Foundation, Inc., shall serve an initial term of four years. Each board of commissioners shall designate one of its appointees to serve an initial term of four years, one to serve an initial term of two years, and one to serve an initial term to~~

~~be determined at the first meeting of the Commission. One-half of the appointees designated to serve an undetermined initial term shall serve an initial term of two years, as determined by lot at the first meeting of the Commission. The remainder of the appointees designated to serve an undetermined initial term shall serve an initial term of four years. Initial terms begin upon approval by the Secretary of State of the articles of incorporation.~~Three of the members initially appointed by the boards of county commissioners pursuant to subdivision (a)(1) of this section shall serve an initial term of two years. The three members to serve initial terms of two years shall be determined by lot at the organizational meeting of the Commission. Each of the initial appointees by the General Assembly and Governor pursuant to subdivision (a)(4) of this section shall serve an initial term of two years.

(c) Removal; Vacancies. – A member of the Commission may be removed with or without cause by the appointing body. In addition, a majority of the Commission members may, by majority vote, remove a member of the Commission if that member does not attend at least three-quarters of the regularly scheduled meetings of the Commission during any consecutive 12-month period of service of that member on the Commission, except that absences excused by the Commission due to serious medical or family circumstances shall not be considered. If the Commission votes to remove a member under this subsection, the vacancy shall be filled in the same manner as the original appointment. Appointments to fill vacancies shall be made for the remainder of the unexpired term by the respective appointing authority. All members shall serve until their successors are appointed and qualified, unless removed from office.

(d) Dual Office Holding. – Service on the Commission may be in addition to any other office a person is entitled to hold.

(e) Officers. – The Commission shall annually elect from its membership a chairperson and a vice-chairperson, and shall annually elect a secretary and a treasurer. After the Commission has been duly organized and its officers elected as provided in this section, the secretary of the Commission shall certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office of the Commission.

(f) Compensation. – The members of the Commission shall receive no compensation other than travel, subsistence, and reasonable per diem expenses determined by the Commission for attendance at Commission meetings and other official ~~Zone~~ Region functions.

"§ **158-36. Voting.**

A majority of the Commission members ~~shall constitute~~constitutes a quorum for the transaction of business. Each voting member of the Commission shall have one vote. ~~The~~ Except as otherwise provided in this Article, the Commission may transact business only by majority vote of the ~~voting~~ members present and voting.

"§ **158-37. Powers of the ~~Zone.~~Region.**

(a) The general powers of the ~~Zone~~ Region include the following:

(1) The powers of a corporate body, including the power to sue and be sued and to adopt and use a common seal.

(2) To adopt bylaws and resolutions in accordance with this Article for its organization and internal ~~management.~~management, including the power to create and appoint an executive and other committees and to vest authority in the executive and other committees, as the Commission deems advisable.

(3) To employ persons as necessary and to fix their compensation within the limit of available funds.

(4) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of a unit of local government for purposes and upon terms agreed upon with the unit of local government.

(5) To make contracts, deeds, leases with or without option to purchase, conveyances, and other instruments, including contracts with the United States, the State of North Carolina, and units of local government.

(6) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise or property or any interest in a franchise or property, within the limit of available funds.

(7) To transfer, lease as lessor with or without option to purchase, exchange, or otherwise dispose of any franchise or property or any interest in a franchise or property, within the limit of available funds.

(8) To surrender to the State of North Carolina any property no longer required by the ~~Zone.~~Region.

(b) The economic development powers of the ~~Zone~~ Region include the following, to the extent appropriate to carry out its purposes as provided in this Article:

(1) To levy a temporary annual motor vehicle registration tax on vehicles with a tax situs within the ~~Zone,~~Region, as provided in G.S. 158-42.

(2) To acquire, construct, improve, maintain, repair, operate, or administer any component part of a public infrastructure system or facility within the ~~Zone,~~Region, directly or by contract with a third party.

(3) Except as otherwise provided in this Article, to exercise the powers granted to a local government for development by G.S. 158-7.1, except the power to levy a property tax.

(4) To make grants and loans to support economic development projects authorized by this Article within the ~~Zone.~~Region.

(5) ~~Reserved.~~To promote travel and tourism, and natural resource-based attractions, within the Region.

(6) To contract with units of local government within the ~~Zone~~ Region to administer the issuance of permits and approvals required of businesses.

(7) To provide employee training programs to prepare workers for employment in the ~~Zone.~~Region.

(8) To gather and maintain information of an economic, a business, or a commercial character that would be useful to businesses within the ~~Zone.~~Region.

(9) To prepare specific site studies to assess the appropriateness of any area within the ~~Zone~~ Region for use or development by a business and to provide opportunities for businesses to examine sites.

(10) To exercise the powers of a regional planning commission as provided in G.S. 153A-395 and the powers of a regional economic development commission as provided in Article 2 of this Chapter, but the ~~Zone~~ Region does not have the authority to establish land-use zoning in any county.

(11) To carry out the purposes of a consolidation and governmental study commission as provided in Article 20 of Chapter 153A of the General Statutes.

(12) To enter in a reasonable manner land, water, or premises within the ~~Zone~~ Region to make surveys, soundings, drillings, or examinations. Such an entry shall not constitute trespass, but the ~~Zone~~ Region shall be liable for actual damages resulting from such an entry.

(13) To monitor and encourage the use of utility corridors adjacent to intrastate and interstate highways within the ~~Zone~~ Region that are four-lane, divided, limited-access highways.

(14) To plan for and assist in the extension of natural gas within the ~~Zone.~~Region.

(15) To assist in the placement of an information highway within the ~~Zone.~~Region.

(16) To do all other things necessary or appropriate to carry out its purposes as provided in this Article.

"§ **158-38. Fiscal accountability.**

The ~~Zone~~ Region is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ **158-39. Funds.**

The establishment and operation of the ~~Zone~~ Region are governmental functions and constitute a public purpose. The State of North Carolina and any unit of local government may appropriate or otherwise provide funds to support the establishment and operation of the ~~Zone.~~Region. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in property to the ~~Zone.~~Region. The ~~Zone~~ Region may apply for grants from the State of North Carolina, the United States, or any department, agency, or instrumentality of the State or the United States. Any department of State government may allocate to the ~~Zone~~ Region any funds the use of which is not restricted by law.

"§ **158-40. Tax exemption.**

Property owned by the ~~Zone~~ Region is exempt from taxation. This tax exemption does not apply to the lease, or other arrangement that amounts to a leasehold interest, of ~~Zone~~ Region property to a private party, or to the income of the lessee, unless the property is leased solely for the purpose of the ~~Zone,~~Region, in which case the activities of the lessee are considered the activities of the ~~Zone.~~Region.

"§ **158-41. Withdrawal; termination.**

(a) Withdrawal. – A county participating in the ~~Zone~~ Region may, by resolution, withdraw from the ~~Zone.~~Region. A resolution withdrawing from the ~~Zone~~ Region may not become effective before the end of the fiscal year in which it is adopted. Upon adoption of a resolution withdrawing from the ~~Zone,~~Region, the board of commissioners of the county shall provide a copy of the resolution to the Secretary of State, the Commission, the Authority, and every other county participating in the ~~Zone.~~Region. Withdrawal does not entitle a county to early distribution of its beneficial interest in ~~Zone~~ Region assets, but a county that has withdrawn retains its right to any distributions that may be made to participating counties pursuant to subsection (b) of this section on the same basis as if it had not withdrawn. For all other purposes, a county that has withdrawn from the ~~Zone~~ Region no longer participates in the ~~Zone.~~Region.

(b) Termination. – The Commission may dissolve the ~~Zone~~ Region and terminate its existence at any time. If the ~~Zone~~ Region is dissolved and terminated or is otherwise unable to expend the tax proceeds received pursuant to G.S. 158-42, the Commission shall liquidate the assets of the ~~Zone~~ Region to the extent possible and distribute all ~~Zone~~ Region assets to the counties of the ~~Zone~~ Region in proportion to the amount of tax collected in each county. The assets of the ~~Zone~~ Region that exceed the amount of tax collected by the counties and are attributable to an appropriation made to the ~~Zone~~ Region by the General Assembly shall revert to the General Fund and may not be distributed to the counties. A county may use funds distributed to it pursuant to this subsection only for economic development projects and infrastructure construction projects. In calculating the amount to be refunded to each county, the ~~Zone~~ Region shall first allocate amounts loaned and not yet repaid as follows:

(1) Amounts loaned for a project in a county will be allocated to that county to the extent of its beneficial ownership of the principal of the trust account created under G.S. 158-42 and the county will become the owner of the right to repayment of the amount loaned to the extent of its beneficial ownership of the principal of the trust account created under G.S. 158-42.

(2) Amounts not allocated pursuant to subdivision (1) shall be allocated among the remaining counties in proportion to the amount of tax collected in each county under G.S. 158-42, and the remaining counties shall become the owners of the right to repayment of the amounts loaned in proportion to the amount of tax collected in each county under G.S. 158-42.

Notes and other instruments representing the right to repayment shall, upon dissolution of the ~~Zone,~~Region, be held and collected by the State Treasurer, who shall disburse the collections to the counties as provided in this subsection.

The Commission shall distribute those assets that it is unable to liquidate among the ~~Zone~~ Region counties insofar as practical on an equitable basis, as determined by the Commission. Upon termination, the State of North Carolina shall succeed to any remaining rights, obligations, and liabilities of the ~~Zone~~ Region not assigned to the ~~Zone~~ Region counties.

"§ **158-42. Temporary ~~Zone~~ Region vehicle registration tax.**

(a) Levy. – The Commission may, by resolution, after not less than 10 days' public notice and a public hearing, levy an annual registration tax of five dollars ($5.00) on motor vehicles with a tax situs within the ~~Zone.~~Region. A tax levied under this section is in addition to any other motor vehicle license or registration tax.

The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers, and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it would have if it were subject to ad valorem tax.

(b) Effective Date; Expiration. – The effective date of a tax levied under this section shall be no earlier than July 1, 1994. The effective date of a tax levied under this section must be the first day of a calendar month set by the Commission in the resolution levying the tax, and shall be no earlier than the first day of the third calendar month after the adoption of the resolution.

The authority of the ~~Zone~~ Region to levy a tax under this section expires five years after the effective date of the first tax levied under this section. A tax levied under this

section expires when the ~~Zone's~~ Region's authority to levy the tax expires. The expiration of the tax does not affect the rights or liabilities of the ~~Zone,~~Region, a taxpayer, or another person arising under this section before the expiration of the tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under this section before the expiration of the tax.

(c) Repeal of Tax. – The Commission may, by resolution, repeal a tax levied under this section. The effective date of the repeal must be the first day of a calendar month set by the Commission in the resolution repealing the tax, and shall be no earlier than the first day of the third calendar month after the adoption of the resolution. Repeal of the tax does not affect the date the ~~Zone's~~ Region's authority to levy the tax expires under subsection (b) of this section. Repeal of the tax does not affect the rights or liabilities of the ~~Zone,~~Region, a taxpayer, or another person arising under this section before the effective date of the repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under this section before the effective date of the repeal.

(d) Administration. – The Division of Motor Vehicles of the Department of Transportation shall collect and administer a tax levied under this section. Immediately after adopting a resolution levying or repealing a tax under this section, the Commission shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the Secretary of State issues an amended certificate of incorporation adding a county to the ~~Zone~~ Region pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy of the amended certificate immediately to the Division of Motor Vehicles. If the Commission receives a resolution from a county withdrawing from the ~~Zone~~ Region pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution immediately to the Division of Motor Vehicles.

A tax levied under this section is due at the same time and subject to the same restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules necessary to administer the tax.

(e) Distribution of Tax Proceeds. – The Commissioner of Motor Vehicles shall credit the proceeds of the tax levied under this section to a special account and distribute the net proceeds on a quarterly basis to the ~~Zone.~~Region. Interest on the special account shall be credited quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax. The Commissioner of Motor Vehicles shall provide the ~~Zone~~ Region with an accounting of the percentage of proceeds collected in each county of the ~~Zone~~ Region in each quarter.

(f) Use of Tax Proceeds. – The ~~Zone~~ Region may use the proceeds of the tax levied under this section only for economic development projects and infrastructure construction projects that are within the territorial jurisdiction of the ~~Zone~~ Region but not within the Global TransPark Complex. The ~~Zone~~ Region shall use the tax proceeds only for public purposes authorized by this Article.

The ~~Zone~~ Region shall place fifteen percent (15%) of the tax proceeds distributed to it under this section in a general funds account and the remaining eighty-five percent (85%) in an interest-bearing trust account. Each county shall be the beneficial owner of a share of the principal of the trust account in proportion to the amount of tax proceeds collected in that county.

The ~~Zone~~ Region may not disburse the principal of the trust account except pursuant to a contract that provides that, within a reasonable time not to exceed 20 years, the ~~Zone~~ Region will recover or be repaid the amount disbursed. The ~~Zone~~ Region may, in

its discretion, set reasonable terms and conditions for the repayment of the principal disbursed, including provisions for securing the debt and the payment of interest."

SECTION 2. G.S. 143B-437.21(6) reads as rewritten:

"§ **143B-437.21. Definitions.**

The following definitions apply in this Part:

…

(6) Regional partnership. – Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The ~~Global TransPark~~ North Carolina's Eastern Region Development Commission created in G.S. 158-33.

e. The Carolinas Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership."

SECTION 3. G.S. 158-12.1 reads as rewritten:

"§ **158-12.1. Commission funds secured.**

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, ~~Global TransPark~~ North Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds."

SECTION 4. Any costs associated with the change of the name of the Global TransPark Development Zone to North Carolina's Eastern Region by this act shall be borne by North Carolina's Eastern Region Development Commission.

SECTION 4.1. The terms of office of the existing members of the Global TransPark Development Commission terminate September 30, 2005. New members of North Carolina's Eastern Region Development Commission shall be appointed for terms beginning October 1, 2005, and ending June 30, 2007, for those receiving two-year initial terms, and ending June 30, 2009, for those receiving four-year initial terms. The terms of the initial officers appointed under G.S. 158-35(e) shall expire June 30, 2006.

SECTION 5. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:27 p.m. on the 8th day of September, 2005.

H.B. 1385 **Session Law 2005-365**

AN ACT TO MAKE CLARIFYING AND CONFORMING AMENDMENTS TO G.S. 143-215.94E, WHICH GOVERNS THE RIGHTS AND OBLIGATIONS OF OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS AND TO REMOVE THE SUNSET APPLICABLE TO, AMEND, AND CODIFY SECTION 10 OF S.L. 2003-352, AS AMENDED BY SUBSECTION (E) OF SECTION 30.10 OF S.L. 2004-124.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94E reads as rewritten:

"§ **143-215.94E. Rights and obligations of the owner or operator.**

…

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with ~~subsections (b), (b1), (c), and (c1)~~ the applicable subsections of this section.

(e1) The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1).

(e2) An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this ~~subsection~~ section within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

~~(e1)~~(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the

General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(e4) (1) If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or this section before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section. The lack of availability of funds in the Commercial Fund or the Noncommercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup.

(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid or reimbursed from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.

(3) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a noncommercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment or cleanup of the discharge or release from a noncommercial underground storage tank are eligible to be paid or reimbursed from the Noncommercial Fund, the Department shall also consider the availability of funds in the Noncommercial Fund and the order in which the discharge or release was reported in determining the schedule.

(4) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors.

~~(e2)~~(e5) (1) As used in this subsection:

a. 'Authorization' means a determination by the Department that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a

petroleum underground storage tank. To 'authorize' means to make such a determination.

b. 'Preapproval' means a determination by the Department that:

1. The nature and scope of a task is reasonable and necessary to be performed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) in order to achieve the purposes of this Part.

2. The amount estimated for the cost of a task does not exceed the amount or rate that is reasonable for that task.

~~(1)~~(2) The Department may require an owner, operator, or landowner to obtain ~~approval from the Department~~ preapproval before proceeding with any ~~task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).~~task. The Department shall specify those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. Preapproval of a task by the Department does not guarantee payment or reimbursement in the amount estimated for the cost of the task at the time preapproval is requested. The Department shall pay or reimburse the cost of a task only if ~~the~~all of the following apply:

a. The cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or ~~143-215.94D(b1)~~ 143-215.94D(b1).

b. Payment is in accordance with G.S. 143-215.94B(d) or G.S. 143-215.94D(d).

c. ~~and if the~~ The Department determines that the cost is reasonable and necessary.

(3) The Commission may adopt rules governing payment or reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required.

(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a ~~cost~~ claim is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the ~~cost.~~claim.

(5) The Department shall authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund only when the task is scheduled to be performed on the basis of a

priority determination pursuant to subsection (e4) of this section. The Department shall not pay or reimburse the cost of any task for which authorization is required under this subsection until the Department has preapproved and authorized the task.

~~(2)~~(6) Except as provided in subdivisions ~~(3) and (4)~~(8) and (9) of this subsection, the Department shall not ~~preapprove~~ authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund or the Noncommercial Fund, whichever applies, to pay ~~a claim for payment or reimbursement of~~ or reimburse the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the ~~owner, operator, or landowner~~ claim is eligible to ~~have the claim~~ be paid under this Part. ~~Except as provided in subdivisions (3) and (4) of this subsection, the Department shall not preapprove any task the cost of which is to be paid or reimbursed from the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Noncommercial Fund to pay a claim for payment or reimbursement of the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the owner, operator, or landowner is eligible to have the claim paid under this Part.~~

(7) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section. ~~This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required as provided in this subsection.~~

~~(3)~~(8) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund ~~when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2)~~ that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the owner, operator, or landowner specifically requests that the task be ~~preapproved~~ authorized and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks

that the Department has ~~preapproved~~ authorized pursuant to ~~subdivision (2)~~subdivisions (5) and (6) of this subsection.

~~(4)~~(9) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund ~~when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2)~~ that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are ~~preapproved~~ authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are ~~preapproved~~ authorized under ~~subdivision (2)~~ subdivisions (5) and (6) of this subsection.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

~~(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this~~

~~subsection is subject to a civil penalty as provided in G.S. 143-215.94W. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection.~~

~~The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~"

SECTION 2. Notwithstanding Section 13 of S.L. 2003-352, Section 10 of S.L. 2003-352, as amended by subsection (e) of Section 30.10 of S.L. 2004-124, and as codified and amended by Section 1 of this act, shall continue in effect.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:27 p.m. on the 8th day of September, 2005.

S.B. 711 **Session Law 2005-366**

AN ACT AUTHORIZING THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ACCEPT, IN ADDITION TO EXAMINATIONS CONDUCTED BY THE BOARD, THE RESULTS OF OTHER BOARD-APPROVED REGIONAL OR NATIONAL INDEPENDENT THIRD-PARTY CLINICAL EXAMINATIONS OF APPLICANTS SEEKING A LICENSE TO PRACTICE DENTISTRY; AND AUTHORIZING THE BOARD TO ACQUIRE REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-30(a) reads as rewritten:

"(a) The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this Article.

The applicant for a license to practice dentistry shall be of good moral character, at least 18 years of age at the time the application ~~for examination~~ is filed. The application for a dental license shall be made to the ~~said~~ Board in writing and shall be accompanied by evidence satisfactory to ~~said~~ the Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the ~~said~~ Board; that ~~he~~ the applicant is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the ~~said Board.~~Board; and that the applicant has passed a clinical licensing examination, the standard of which shall be determined by the Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations or to accept the results of other Board-approved regional or national independent third-party clinical examinations that shall include procedures performed on human subjects as part of the assessment of restorative clinical competencies and that are determined by the Board to be of such

character as to thoroughly test the qualifications of the applicant, and may refuse to grant a license to any person who, in its discretion, is found deficient in ~~said examination, or~~the examination. The Board may refuse to grant a license to any person guilty of cheating, deception or fraud during ~~such~~ the examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic or clinical education. The Board may employ such dentists found qualified therefor by the Board, in examining applicants for licenses as it deems appropriate.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect."

SECTION 2. G.S. 90-39(1) reads as rewritten:

"§ **90-39. Fees.**

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules not exceeding the following:

(1) Each application for general dentistry ~~examination~~license.....$1,200

…"

SECTION 3. G.S. 90-28 reads as rewritten:

"§ **90-28. Bylaws and ~~regulations.~~regulations; acquisition of property.**

(a) The North Carolina State Board of Dental Examiners shall have the power to make necessary bylaws and regulations, not inconsistent with the provisions of this Article, regarding any matter referred to in this Article and for the purpose of facilitating the transaction of business by the ~~said~~ Board.

(b) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board."

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

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:29 p.m. on the 8th day of September, 2005.

S.B. 796 **Session Law 2005-367**

AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL OPERATIONS AND INVESTIGATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.17. Criminal record checks of applicants for permit or license to conduct exploration, recovery, or salvage operations and archaeological investigations.**

The Department of Justice may provide to the Department of Cultural Resources from the State and National Repositories of Criminal Histories the criminal history of any applicant for a permit or license under Article 3 of Chapter 121 of the General Statutes or Article 2 of Chapter 70 of the General Statutes. Along with the request, the Department of Cultural Resources shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Cultural Resources shall keep all information obtained under this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. G.S. 121-25 reads as rewritten:

"§ **121-25. License to conduct exploration, recovery or salvage operations.**

Any qualified person, firm or corporation desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any part of a derelict vessel or its contents or other archaeological site may be removed, displaced or destroyed, shall first make application to the Department of Cultural Resources ~~for~~ and obtain a permit or license to conduct such operations. If the Department of Cultural Resources shall find that the granting of such permit or license is in the best interest of the State, it may grant such applicant a permit or license for such a period of time and under such conditions as the Department may deem to be in the best interest of the State. Such permit or license may include but need not be limited to the following:

(1) Payment of monetary fee to be set by the Department;
(2) That a portion or all of the historic material or artifacts be delivered to custody and possession of the Department;
(3) That a portion of all of such relics or artifacts may be sold or retained by the licensee;
(4) That a portion or all of such relics or artifacts may be sold or traded by the Department.

Permits or licenses may be renewed upon or prior to expiration upon such terms as the applicant and the Department may mutually agree. Holders of permits or licenses shall be responsible for obtaining permission of any federal agencies having jurisdiction, including the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers prior to conducting any salvaging operations."

SECTION 3. Article 3 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-25.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

(1) Applicant. – A person or entity applying for a permit or license under G.S. 121-25 to conduct any type of exploration, recovery, or salvage

operations of any part of a derelict vessel or its contents or other archaeological site.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to

issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.

(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.

(7) The subsequent commission by the person of a crime."

SECTION 4. Article 2 of Chapter 70 of the General Statutes is amended by adding a new section to read:

"§ **70-13.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

(1) Applicant. – A person or entity applying for a permit or license under G.S. 70-13 to conduct any type of archaeological investigation on State lands.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other

identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a crime."

SECTION 5. This act becomes effective October 1, 2005, and applies to applications for permits or licenses submitted to the Department of Cultural Resources on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:30 p.m. on the 8th day of September, 2005.

S.B. 505 **Session Law 2005-368**

AN ACT TO INCREASE THE FEE PAID TO LOCAL MEDICAL EXAMINERS FOR EACH INVESTIGATION CONDUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-387 reads as rewritten:

"§ **130A-387. Fees.**

For each investigation and prompt filing of the required report, the medical examiner shall receive a fee paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~seventy-five dollars ($75.00)~~ one hundred dollars ($100.00)."

SECTION 2. This act is effective when it becomes law and applies to deaths investigated on or after that date.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:31 p.m. on the 8th day of September, 2005.

S.B. 804 **Session Law 2005-369**

AN ACT TO IMPROVE THE PUBLIC HEALTH INFRASTRUCTURE BY ESTABLISHING AN ACCREDITATION SYSTEM FOR LOCAL HEALTH DEPARTMENTS, AS RECOMMENDED BY THE PUBLIC HEALTH TASK FORCE 2004.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 130A-2 is amended by adding the following new subdivision in alphabetical order to read:

"§ **130A-2. Definitions.**

The following definition shall apply throughout this Chapter unless otherwise specified:

…

(01) "Accreditation board" or "Board" means the Local Health Department Accreditation Board."

SECTION 1.(b) Part 1 of Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-34.1. Accreditation of local health departments; board established.**

(a) The Local Health Department Accreditation Board is established within the North Carolina Institute for Public Health. The Board shall be composed of 17 members appointed by the Secretary of the Department of Health and Human Services as follows:

(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local board of health as recommended by the Association of North Carolina Boards of Health.

(2) Three local health directors.

(3) Two staff members from the Division of Public Health, Department of Health and Human Services.

(4) One staff member from the Division of Environmental Health, recommended by the Secretary of Environment and Natural Resources.

(5) Three at large.

(b) Members shall serve four-year terms except that initial terms shall be staggered such that three members are appointed for one year, four members are appointed for two years, four members are appointed for three years, and six members are appointed for four years. An appointment to fill a vacancy on the Board created by the resignation, dismissal, ineligibility, death, or disability of any member shall be made for the balance of the unexpired term. The Secretary may remove any member for misfeasance, malfeasance, or nonfeasance. The chair shall be designated by the Secretary and shall designate the times and places at which the Board shall meet. The Board shall meet as often as necessary to carry out its duty to develop and review periodically accreditation standards, to engage in activities necessary to assign accreditation status to local health departments, and to engage in other activities necessary to implement this section.

(c) Members of the Board who are not officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rates specified in

G.S. 138-5. Members of the Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(d) The Board shall assign an accreditation status to each local health department that applies for initial accreditation, reaccreditation, or relief from conditional accreditation. The Board shall assign the appropriate accreditation status, as follows:

(1) Accredited, which means that the local health department has satisfied the accreditation standards adopted by the Board and applicable rules adopted by the Commission.

(2) Conditionally accredited, which means that the local health department has failed to meet one or more accreditation standards and has therefore been granted short-term accreditation subject to conditions specified by the Board.

(3) Unaccredited, which means that the local health department has continued to fail to meet one or more accreditation standards after a period of conditional accreditation.

(e) The Commission shall, after reviewing standards developed by and consulting with the Board, adopt rules establishing accreditation standards for local health departments. The accreditation standards shall include at least all of the following:

(1) An accreditation process that consists of the following components:

a. A self-assessment conducted by the local health department seeking accreditation.

b. A site visit by a team of experts to clarify, verify, and amplify the information in the self-assessment.

c. Final action by the Board on the local health department's accreditation status.

(2) The local health department's capacity to provide the essential public health services, as follows:

a. Monitoring health status to identify community health problems.

b. Diagnosing and investigating health hazards in the community.

c. Informing, educating, and empowering people about health issues.

d. Mobilizing community partnerships to identify and solve health problems.

e. Developing policies and plans that support individual and community health efforts.

f. Enforcing laws and regulations that protect health and ensure safety.

g. Linking people to needed personal health care services and assuring the provision of health care when otherwise unavailable.

h. Assuring a competent public health workforce and personal health care workforce.

i. Evaluating effectiveness, accessibility, and quality of personal and population-based health services.

j. Conducting research.

(3) The local health department's facilities and administration.

(4) The local health department's staff competencies and training procedures or programs.

(5) The local health department's governance and fiscal management; and

(6) Informal procedures for reviewing Board decisions.

(f) All local health departments shall obtain and maintain accreditation in accordance with this section. The Board shall implement accreditation over a period of eight years, beginning January 1, 2006. The Board shall establish a schedule specifying when each local health department shall apply for initial accreditation and ensuring that all local health departments have applied for initial accreditation by December 1, 2014.

(g) The Board shall assign the following accreditation status, as applicable:

(1) "Accredited" to a local health department that satisfies the accreditation standards. The initial period of accreditation shall expire four calendar years after initial accreditation is granted.

(2) "Conditionally accredited" to a local health department that, in its initial accreditation application, fails to satisfy the accreditation standards. The period of conditional accreditation shall expire two calendar years after conditional accreditation is granted. The Board shall provide to the local health department a written statement of the conditions that must be satisfied in order for the local health department to be accredited. At any time during the two-year period, the local health department may request that its status be reviewed and changed from "conditionally accredited" to "accredited." If the Board finds that the conditions have been met, the Board shall change the local health department's status to "accredited" with the accreditation period to expire four calendar years after the conditional accreditation was initially granted. If the Board finds that the conditions have not been satisfied, the local health department shall continue under its grant of conditional accreditation. During the conditional accreditation period, the local health department may apply again for accreditation in accordance with rules adopted by the Commission.

(h) Each accredited local health department shall apply for reaccreditation in accordance with rules adopted by the Commission.

(i) When the Board assigns the status "unaccredited" to a local health department, the Board shall send written notification of that status to the local health department and to the Secretary.

(j) The Commission shall adopt rules to implement this section."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:32 p.m. on the 8th day of September, 2005.

H.B. 576 **Session Law 2005-370**

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS AND TO STUDY THE USE OF REVERSE AUCTIONS FOR THE PROCUREMENT OF ARCHITECTURAL, ENGINEERING, SURVEYING, CONSTRUCTION MANAGEMENT AT-RISK, OR CONSTRUCTION SERVICES BY A PRIVATE ENTITY THAT HAS

RECEIVED PUBLIC MONEY AS AN INCENTIVE TO COMPLETE THE PROJECT WITH RESPECT TO WHICH THE SERVICES ARE REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.34 reads as rewritten:

"§ **143-64.34. Exemption of certain projects.**

(a) State ~~Capital Improvement Projects~~ capital improvement projects under the jurisdiction of the State Building Commission and community college capital improvement projects, where the estimated expenditure of public money is less than one hundred thousand dollars ~~($100,000)~~($100,000), are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article ~~if:~~if all of the following apply:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design ~~agreement;~~agreement.

(2) The open-end design agreement has been publicly ~~announced; and~~announced.

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).

(c) A community college capital improvement project where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if all of the following apply:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement.

(2) The open-end design agreement has been publicly announced.

(3) The open-end design agreement complies with procedures adopted by the State Board of Community Colleges and approved by the State Building Commission."

SECTION 2. G.S. 143-135.26(12) reads as rewritten:

"§ **143-135.26. Powers and duties of the Commission.**

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

…

(12) To adopt rules governing the use of open-end design agreements for State capital improvement projects and community college buildings as defined in subdivision (4) of this section, where the ~~fee~~ expenditure of public money does not exceed the amount specified in ~~G.S. 143-64.34(b).~~G.S. 143-64.34(b) or (c).

…."

SECTION 3. As part of the study of the William S. Lee Act and the Job Development Investment Grant Program directed in Section 8 of S.L. 2005-241, the Economic Development Oversight Committee (Committee) shall study the use of reverse auctions for the procurement of professional services, including architectural, engineering, surveying and construction management at risk, or other construction services, by businesses that receive economic development incentives from the State or a local government. The Committee shall consider the advisability of making business

incentives contingent upon a business's commitment not to use a reverse auction procurement process. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly before the beginning of the 2006 Regular Session of the 2005 General Assembly.

SECTION 4. Sections 3 and 4 of this act are effective when this act becomes law. The remainder of this act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:33 p.m. on the 8th day of September, 2005.

H.B. 1112 **Session Law 2005-371**

AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO DEVELOP A CENTRAL LISTING OF MENTAL HEALTH FACILITIES DESIGNATED TO ASSIST IN THE PLACEMENT OF INDIVIDUALS TO BE INVOLUNTARILY COMMITTED AND REQUIRE AREA AUTHORITIES TO MAINTAIN A CRISIS RESPONSE SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a central listing of mental health facilities designated for the placement of individuals to be involuntarily committed to assist law enforcement officers and others. The list shall be developed from existing funds appropriated to the Department. The listing shall be accessible on the Internet and implemented not later than October 1, 2005. The Department shall report on the implementation of the listing and the status and compliance of area authorities' crisis response service to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than March 1, 2006.

SECTION 2. G.S. 122C-117(a) is amended by adding the following new subdivision to read:

"(14) Maintain a 24-hour a day, seven day a week crisis response service. Crisis response shall include telephone and face-to-face capabilities. Crisis phone response shall include triage and referral to appropriate face-to-face crisis providers and shall be initiated within one hour of notification. Crisis services do not require prior authorization but shall be delivered in compliance with appropriate policies and procedures. Crisis services shall be designed for prevention, intervention, and resolution, not merely triage and transfer, and shall be provided in the least restrictive setting possible, consistent with individual and family need and community safety."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:35 p.m. on the 8th day of September, 2005.

S.B. 1130 **Session Law 2005-372**

AN ACT TO PROHIBIT SMOKING IN STATE CORRECTIONAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599, as amended by S.L. 2005-19, S.L. 2005-168, and S.L. 2005-239, is amended by adding a new subdivision to read:

"(9) State correctional facilities operated by the Department of Correction."

SECTION 2. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-23.1. Smoking prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products inside State correctional facilities and to ensure that employees and visitors do not use tobacco products inside those facilities.

(b) No person may use tobacco products inside of a State correctional facility, except for authorized religious purposes.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. – All buildings of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use."

SECTION 3. The Department of Correction shall conduct one or more pilot programs banning smoking both inside buildings and on the grounds of State correctional institutions and administering smoking cessation programs for staff and inmates. The pilot smoking cessation programs shall be available to inmates and staff on a volunteer basis, and no person shall be compelled or coerced to participate. The smoking cessation program shall include instructions and education that will help inmates and staff cease the use of tobacco products and remain smoke free. The cost of administering the pilot smoking cessation program shall be paid from existing funds available to the Department of Correction. The Department of Correction may use services, personnel, and resources donated by nongovernmental agencies and organizations to implement this program. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before April 1, 2006, on the progress and status of the pilot programs.

SECTION 4. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall study and make legislative recommendations on the feasibility and implementation of a two-year phase-in program banning smoking by all inmates, personnel, and visitors in all buildings and on all grounds of State correctional institutions operated by the Department of Correction.

This study shall examine methods to assist with smoking cessation, including the use of nongovernmental agencies, organizations, and corporations for counseling, training, cessation aids, and interventions. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall report the results of this study to the General Assembly prior to the convening of the 2006 Session of the 2005 General Assembly.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:39 p.m. on the 8th day of September, 2005.

S.B. 506 Session Law 2005-373

AN ACT TO BRING NORTH CAROLINA LAW INTO COMPLIANCE WITH PUBLIC LAW 107-260, THE BENIGN BRAIN TUMOR CANCER REGISTRIES AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-209 reads as rewritten:

"§ **130A-209. Incidence reporting of cancer; charge for collection if failure to report.**

(a) All health care facilities and health care providers that detect, diagnose, or treat cancer or benign brain or central nervous system tumors shall report to the central cancer registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated by the facility or provider. The reports shall be made within six months of diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report.

(b) If a health care facility or health care provider fails to report as required under this section, then the central cancer registry may conduct a site visit to the facility or provider or be provided access to the information from the facility or provider and report it in the appropriate format. The Commission may adopt rules requiring that the facility or provider reimburse the registry for its cost to access and report the information in an amount not to exceed one hundred dollars ($100.00) per case. Thirty days after the expiration of the six-month period for reporting under subsection (a) of this section, the registry shall send notice to each facility and provider that has not submitted a report as of that date that failure to file a report within 30 days shall result in collection of the data by the registry and liability for reimbursement imposed under this section. Failure to receive or send the notice required under this section shall not be construed as a waiver of the reporting requirement. For good cause, the central cancer registry may grant an additional 30 days for reporting.

(c) As used in this section, the term:

(1) "Health care facility" or "facility" means any hospital, clinic, or other facility that is licensed to administer medical treatment or the primary function of which is to provide medical treatment in this State. The term includes health care facility laboratories and independent pathology laboratories;

(2) "Health care provider" or "provider" means any person who is licensed or certified to practice a health profession or occupation under Chapter 90 of the General Statutes and who diagnoses or treats ~~cancer.~~cancer or benign brain or central nervous system tumors."

SECTION 2. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:40 p.m. on the 8th day of September, 2005.

S.B. 895 **Session Law 2005-374**

AN ACT TO CLARIFY REAL ESTATE BROKERS DUTIES RELATED TO REAL ESTATE TRUST MONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-3 reads as rewritten:

"§ **93A-3. Commission created; compensation; organization.**

…

(b) ~~Members~~The provisions of G.S. 93B-5 notwithstanding, members of the Commission shall receive as compensation for each day spent on work for the Commission a per diem in an amount established by the Commission by rule, and mileage reimbursement for transportation by privately owned automobile at the business standard mileage rate set by the Internal Revenue Service per mile of travel along with actual cost of tolls paid. ~~the per diem, subsistence and travel allowances as provided in G.S. 93B-5.~~ The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina. The Commission may deposit moneys in accounts, certificates of deposit, or time deposits as the Commission may approve, in any bank, savings and loan association, or trust company. Moneys also may be invested in the same classes of securities referenced in G.S. 159-30(c).

…

(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission shall reimburse its employees for travel on official business. Mileage expenses for transportation by privately owned automobile shall be reimbursed at the business standard mileage set by the Internal Revenue Service per mile of travel along with the actual tolls paid. Other travel expenses shall be reimbursed in accordance with G.S. 138-6. The Commission may, when it deems it necessary or convenient, delegate

to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

…"

SECTION 2. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the ~~temporary~~ custodian or manager of the funds of ~~others, in a real estate transaction;~~another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall

not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

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

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:41 p.m. on the 8th day of September, 2005.

H.B. 1409 **Session Law 2005-375**

AN ACT TO PROVIDE THAT A JUDICIAL HEARING MAY BE CONDUCTED TO DETERMINE THE SOURCE OF MONEY OR PROPERTY FOR A SECURED APPEARANCE BOND, AND WHETHER IT WILL REASONABLY ASSURE THE DEFENDANT'S APPEARANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-539 reads as rewritten:

"§ **15A-539. Modification upon motion of prosecutor.**

(a) A prosecutor may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of an order of release under this Article.

(b) A district or superior court judge may, upon motion of the State or upon the judge's own motion, and for good cause shown, conduct a hearing into the source of money or property to be posted for any defendant who is about to be released on a secured appearance bond. The court may refuse to accept offered money or property as security for the appearance bond that, because of its source, will not reasonably assure the appearance of the person as required. The State shall have the burden of proving, by a preponderance of the evidence, the facts supporting the court's decision to refuse to accept the offered money or property as security for the bond.

(c) Nothing in this section shall affect the legal rights of any surety on a bail bond, bonding company, or a professional bondsman."

SECTION 2. This act becomes effective December 1, 2005, and applies to bond hearings conducted on or after that date, provided that if a pretrial release order

has been entered prior to the effective date of this act, the court may not revoke or modify the order of release solely on the basis of this act.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:41 p.m. on the 8th day of September, 2005.

S.B. 148 **Session Law 2005-376**

AN ACT TO EXTEND THE LAW ENFORCEMENT OFFICERS', FIREMEN'S, RESCUE SQUAD WORKERS', AND CIVIL AIR PATROL MEMBERS' DEATH BENEFIT TO PERMANENT PART-TIME AND TEMPORARY LAW ENFORCEMENT OFFICERS AND DETENTION OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-166.2(d) reads as rewritten:

"(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and all law-enforcement officers employed ~~full time~~ full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality ~~thereof~~ thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the North Carolina Department of ~~Correction~~ Correction; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Department of Juvenile Justice and Delinquency ~~Prevention.~~ Prevention and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both "eligible fireman"; or "fireman" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant

to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties."

SECTION 2. There is appropriated from the General Fund to the Department of State Treasurer the sum of one hundred thousand dollars ($100,000) for the 2005-2006 fiscal year to implement the provisions of this act.

SECTION 3. This act becomes effective November 1, 2004, and applies to all deaths occurring on or after that date.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:42 p.m. on the 8th day of September, 2005.

S.B. 356 **Session Law 2005-377**

AN ACT TO ALLOW A FUEL TAX REFUND FOR OFF-ROAD FUEL USE BY PUMPER TRUCKS AND SWEEPERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.107(b) reads as rewritten:

"(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the

vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle."

SECTION 2. This act is effective when it becomes law and applies to motor fuel and alternative fuel consumed on or after January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:44 p.m. on the 8th day of September, 2005.

H.B. 613 **Session Law 2005-378**

AN ACT TO UPDATE THE LAWS REGULATING THE PRACTICE OF RECREATIONAL THERAPY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90C-1 through G.S. 90C-19 are repealed.

SECTION 1.1. The title of Chapter 90C reads as rewritten:

"**Chapter 90C.**

~~Therapeutic Recreation Personnel Certification Act.~~ North Carolina Recreational Therapy Licensure Act."

SECTION 2. Chapter 90C of the General Statutes is amended by adding the following new sections to read:

"**§ 90C-20. Short title.**

This Chapter shall be known as the 'North Carolina Recreational Therapy Licensure Act'.

"**§ 90C-21. Purpose.**

It is the purpose and intent of the Recreational Therapy Licensure Act to safeguard the health and safety of the public and to protect the public from harm by unqualified persons by establishing a minimum level of education, experience, and competence to assure the highest degree of professional care and conduct on the part of licensed recreational therapists and licensed recreational therapy assistants.

"**§ 90C-22. Definitions.**

In this Chapter, unless the context otherwise requires, the following definitions shall apply:

(1) Board. – The North Carolina Board of Recreational Therapy Licensure.

(2) Licensed recreational therapist. – A person who holds a license pursuant to this Chapter as a recreational therapist. A person licensed as a 'Recreational Therapist' under this Chapter may practice in clinical, residential, educational, and community settings and may:

a. Conduct an individualized patient or client assessment for the purpose of collecting systematic, comprehensive, and accurate data necessary to determine a course of action and subsequent individualized treatment plan.

b. Plan and develop the individualized treatment plan that identifies a patient or client's goals, objectives, and treatment intervention strategies.

c. Implement the individualized treatment plan that is consistent with the overall patient or client treatment program.

d. Systematically evaluate and compare the patient or client's response to the individualized treatment plan and suggest modifications as appropriate.

e. Develop a discharge plan in collaboration with the patient or client, his or her family, and other treatment team members.

f. Serve as a resource for patient or client recreation opportunities to promote or improve his or her general health and well-being.

g. Deliver services in accordance with the professional standards of practice and codes of ethics promulgated by national or State professional organizations.

h. Manage delivery of services in accordance with a written plan of operation based upon standards advanced by appropriate membership, regulatory, and credentialing agencies.

i. Provide professional and preprofessional education and training of recreational therapists or recreational therapy assistants.

j. Conduct research in the field of recreational therapy or therapeutic recreation.

(3) Licensed recreational therapy assistant. – A person who holds a license pursuant to this Chapter as a recreational therapy assistant to act under the supervision of a licensed recreational therapist as defined by rule. A person licensed as a 'Recreational Therapy Assistant' under this Chapter may assist in the practice of recreational therapy in clinical, residential, and community settings under the supervision of a licensed recreational therapist and in accordance with a recreational therapy assistant's training, education, and scope of practice, as defined by rule.

(4) Person. – Any individual, corporation, partnership, association, unit of government, or other legal entity.

(5) Recreational therapy aide. – Any nonlicensed person who aids in the provision of recreational therapy services under the provisions of this Chapter, and who acts under the direction and on-site supervision of a licensed recreational therapist or licensed recreational therapy assistant. A recreational therapy aide may perform recreational therapy related duties and functions which are assigned and are commensurate with an aide's training and competency. An aide's work shall not include responding to a physician's orders; designing, conducting, or interpreting individualized recreational therapy patient assessment; determining or modifying recreational therapy treatment plans or interventions; or any independent practice or performance of recreational therapy services.

(6) Scope of recreational therapy. – The practice of recreational therapy includes all direct patient or client services of assessment, planning, design, implementation, evaluation, and documentation of specific interventions, management, consultation, research, and education for either individuals or groups that require specific therapeutic recreation or recreational therapy intervention representing the process and knowledge base delineated in the most recent National Council for Therapeutic Recreation Certification (NCTRC) Job Analysis Study and professional standards of practice. Scope is inclusive of

professional and preprofessional education and training in recreational therapy, therapeutic recreation, and related research.

(7) Recreational therapy. – A treatment service designed to restore, remediate, or rehabilitate a patient or client's level of functioning and independence in life activities, as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition.

(8) Therapeutic recreation. – The provision of treatment services and the provision of recreation services to persons with illnesses or disabling conditions. The primary purposes of treatment services, which are often referred to as recreational therapy, are to restore, remediate, or rehabilitate in order to improve functioning and independence as well as reduce or eliminate the effects of illness or disability. The primary purposes of recreation services are to provide recreation resources and opportunities in order to improve health and well-being. Therapeutic recreation is provided by professionals who are trained and certified, registered, or licensed to provided therapeutic recreation.

"§ **90C-23. North Carolina Recreational Therapy Licensure Board is created.**

(a) The North Carolina Recreational Therapy Licensure Board is created.

(b) Composition. – The Board shall consist of eight members appointed as follows:

(1) Three practicing recreational therapists, one of whom shall be appointed by the Governor, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) One licensed practicing recreational therapy assistant appointed by the Governor.

(3) One licensed practicing recreational therapist who is engaged primarily in providing education or training for recreational therapists or recreational therapy assistants appointed by the Governor.

(4) One physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes appointed by the Governor.

(5) Two public members, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

The Governor shall make appointments after consultation with the North Carolina Recreational Therapy Licensure Board and other interested persons.

(c) Qualifications. – The nonpublic recreational therapist or recreational therapy assistant members of the Board shall hold a current license. Each nonpublic recreational therapist or recreational therapy assistant member of the Board, at the time of his or her appointment and for at least two years before, shall have been actively engaged in North Carolina in the practice of recreational therapy or therapeutic recreation, in the education and training of graduate or undergraduate students of recreational therapy or therapeutic recreation, or in recreational therapy or therapeutic recreation research.

One public member shall not be a licensed health care professional or an agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. One public member shall have received recreational therapy or therapeutic recreation services. For purposes of this subsection, a person enrolled in a program to prepare him or her to be a licensed health care professional or an allied health professional shall not be eligible to serve as a public member of the Board. The spouse of any person who would be prohibited by this subsection from serving on the Board as a public member shall not serve as a public member of the Board. Public members shall reasonably reflect the population of this State.

(d) Term. – Members of the Board shall serve three-year staggered terms and shall serve until a successor is appointed and qualified. No member shall serve more than two consecutive full terms.

(e) Vacancies. – The Governor shall fill vacancies to the Board positions for which the Governor is the appointing authority within 30 days after a position is vacated. The General Assembly shall fill vacancies for which it is the appointing authority in accordance with G.S. 120-122. Appointees shall serve the remainder of the unexpired term and until their successors have been appointed and qualified.

(f) Removal. – The Board may remove any of its members for gross neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from Board business until the charges are resolved. The Governor may also remove any member for gross neglect of duty, incompetence, or unprofessional conduct.

(g) Compensation. – Each member of the Board shall receive such per diem compensation and reimbursement for travel and subsistence as shall be set for licensing Board members generally, as provided in G.S. 93B-5.

(h) Officers. – The officers of the Board shall be a chairman, a vice-chairman, and other officers deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(i) Meetings. – The Board shall hold at least two meetings each year to conduct business and shall adopt rules governing the calling, holding, and conducting of regular and special meetings. A majority of the Board members shall constitute a quorum.

(j) Employees. – The Board may employ necessary personnel for the performance of its functions and fix their compensation within the limits of the funds available to the Board.

(k) The total expense of the administration of this Chapter shall not exceed the total income from fees collected pursuant to this Chapter. None of the expenses of the Board, or the compensation or expenses of any officer or any employee of the Board, shall be paid or payable out of the General Fund. Neither the Board nor any of its officers or employees may incur any expense, debt, or other financial obligation binding upon the State.

"§ **90C-24. Powers of the Board.**

(a) The Board shall have the following general powers and duties:

(1) To administer this Chapter.

(2) To issue interpretations of this Chapter.

(3) To adopt, amend, or repeal rules and regulations in the manner prescribed by Chapter 150B of the General Statutes, as may be necessary to carry out the provisions of this Chapter.

(4) To establish qualifications of, employ, and set the compensation of the Executive Director who shall not be a member of the Board.

(5) To employ and fix the compensation of the personnel that the Board determines are necessary to carry out the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.

(6) To determine the qualifications of persons who are licensed pursuant to this Chapter.

(7) To issue, renew, deny, suspend, or revoke licenses and carry out any of the other actions authorized by this Chapter.

(8) To conduct investigations for the purpose of determining whether violations of this Chapter are grounds for revoking, denying, suspending, or refusing to renew the licenses of persons licensed pursuant to this Chapter.

(9) To maintain a record of all proceedings and make available to persons who hold a license and other concerned parties an annual report of all Board action.

(10) To set fees for licensure, license renewal, and other services deemed necessary to carry out the purpose of this Chapter.

(11) To adopt a seal containing the name of the Board to be used on licenses and official reports it issues.

(12) To issue annually a list stating the names of persons currently licensed under the privilege of this Chapter.

(13) To establish or approve, as defined by rule, reasonable competency requirements for licensure, including the power to adopt or use examination materials, study or training courses, and standards of recognized accrediting and credentialing agencies and professional associations and the power to establish or approve, as defined by rule, reasonable standards for renewal of licensure, including requirements for continuing recreational therapy or therapeutic recreation education.

(b) The powers and duties enumerated above are granted for the purpose of enabling the Board to protect the public from misrepresentation of licensure status as provided in this Chapter and shall be liberally construed to accomplish this objective.

"**§ 90C-25. Executive Director.**

The Executive Director shall deposit all fees payable to the Board in financial institutions designated by the Board as official depositories. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Chapter. The State Auditor shall audit the Board annually.

"**§ 90C-26. The Board may accept contributions, etc.**

The Board may accept grants, contributions, devises, bequests, and gifts that shall be kept in a separate fund and shall be used by it to publicize the licensure program and its protective benefits to the public.

"**§ 90C-27. Requirements for licensure.**

(a) The Board shall license any person as a 'Licensed Recreational Therapist' who meets the following education, credential, and experience requirements:

(1) Passage of an appropriate examination as a therapeutic recreation specialist or a recreational therapist by the North Carolina Recreational Therapy Licensure Board or current certification as a 'Certified

Therapeutic Recreation Specialist' by the National Council for Therapeutic Recreation Certification.

(2) A minimum level of education or experience, as defined by rules of the Board, inclusive of practice competency standards or guidelines promulgated by professional associations and credentialing and accrediting organizations.

(3) For purposes of this subsection, an academic major or specialization shall be defined by rules of the Board and shall be inclusive of information gathered through surveys of educational institutions in the State having a bachelors or masters degree with a specialization in recreational therapy or therapeutic recreation.

(b) The Board shall license any person as a 'Licensed Recreational Therapy Assistant' who meets the following education and experience requirements:

(1) A minimum level of education or experience, as defined by rules of the Board, inclusive of practice competency standards or guidelines promulgated by professional associations and credentialing and accrediting organizations as deemed appropriate by the Board.

(2) For purposes of this section, an academic major or specialization shall be defined by rules of the Board and shall be inclusive of information gathered through surveys of educational institutions in the State having associate degree curricula in recreational therapy or therapeutic recreation.

"§ **90C-28. Licensure fees.**

Applications for licensure shall be made on forms prescribed and furnished by the Board. The Board may establish fees for the actual cost of duplication services, materials, and returned bank items. All fees derived from services provided by the Board under the provisions of this Chapter shall be nonrefundable. The Board shall establish the amount of fees as defined by rule not to exceed the following amounts:

(1) Initial application for licensure fee	$200.00
(2) Licensure renewal fee	$200.00
(3) Record maintenance fee	$100.00
(4) Inactive fee	$ 50.00.

"§ **90C-29. License renewal.**

Every license issued pursuant to this Chapter shall be renewable every two years. Within 30 days before the expiration date, a person who desires to continue to be licensed in the field of therapeutic recreation or recreational therapy shall apply for license renewal on forms furnished by the Board. The applicant shall meet criteria for renewal, including continuing education, established by the Board as defined by rule and shall pay the required fee established by the Board pursuant to this Chapter. Failure to renew the license before the expiration date shall result in automatic forfeiture of any license issued pursuant to this Chapter.

The Executive Director shall notify, in writing, every person at his or her last known address of the expiration of his or her license and the amount that is required for its two-year renewal.

"§ **90C-30. Reinstatement.**

A person who has allowed his or her license to lapse by failure to renew it pursuant to this Chapter must apply for licensure on a reinstatement form provided by the Board. The Board shall require the applicant to return the completed reinstatement licensure form including renewal requirements established by the Board as defined by rule. If the

license has lapsed for more than two years, the Board shall require the applicant to successfully demonstrate competency as defined by rules established by the Board. If the Board determines that the license should be reinstated, it shall issue a license renewal to the applicant.

"§ **90C-31. Inactive list.**

When a person licensed by the Board submits a request for inactive status and pays the inactive fee, the Board shall issue to the person a statement of inactive status and shall place the person's name on the 'Inactive Status' list. While on that list, the person shall not hold himself or herself out as licensed pursuant to this Chapter. When that person desires to be removed from the inactive list and returned to an active list, an application shall be submitted to the Board on a form furnished by the Board, and the fee shall be paid for license renewal. The Board shall require evidence of competency as defined by rule to resume practice before returning the applicant to the active status.

"§ **90C-32. Revocation, suspension, or denial of licensure.**

The Board may require remedial education, issue of a letter of reprimand, restrict, revoke, or suspend any license issued pursuant to this Chapter or deny any application for licensure if the Board determines that the licensee or applicant has done any of the following:

(1) Given false information or withheld material information from the Board in procuring or attempting to procure a license pursuant to this Chapter.

(2) Been convicted of, or pleaded guilty or nolo contendere to, any crime that indicates that the person is unfit or incompetent to be licensed pursuant to this Chapter.

(3) Is unable to perform the functions for which a license has been issued due to impairment of mental or physical faculties.

(4) Engaged in conduct that endangers the public health.

(5) Is unfit or incompetent to be licensed pursuant to this Chapter by reason of deliberate or negligent acts or omissions regardless of whether active injury to the patient or client is established.

(6) Engages in conduct that deceives, defrauds, or harms the public in the course of claiming licensed status or practicing recreational therapy.

(7) Willfully violated any provision of this Chapter, rules, or code of ethics enacted by the Board.

(8) Aided, abetted, or assisted any person in violating the provisions of this Chapter.

The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to safely and properly practice recreational therapy.

"§ **90C-33. Reciprocity.**

The Board may grant a license, without examination or by special examination, to any person who, at the time of application, is licensed as a recreational therapist or therapeutic recreation specialist by a similar Board of another country, state, or territory whose licensing standards are substantially equivalent to or higher than those required by this Chapter. The Board shall determine the substantial equivalence upon which reciprocity is based.

"§ **90C-34. Persons and practices not affected.**

Nothing in this Chapter shall be construed to prevent or restrict:

(1) Any person qualified, registered, certified, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as that person does not represent himself or herself as a recreational therapy assistant or recreational therapist or the work to be recreational therapy or therapeutic recreation as defined by this Chapter.

(2) Any person employed as a therapeutic recreation specialist, therapeutic recreation assistant, or recreational therapist or a recreational therapy assistant by the government of the United States, if he or she provides therapeutic recreation or recreational therapy solely under the direction and control of the organization by which he or she is employed.

(3) Any person pursuing a course of study leading to a degree in recreational therapy or therapeutic recreation at an accredited college or university that meets the minimum academic requirements for a major or specialization in recreational therapy as defined by the rules and regulations of the Board.

(4) Any person fulfilling the supervised fieldwork experience required for a degree and for licensure, as defined by the rules of the Board, if the person is designated by a title that clearly indicates his or her status as a student.

"§ **90C-35. Reports; immunity from suit.**

Any person who has reasonable cause to suspect malpractice, misconduct, or incapacity of a person who is licensed pursuant to this Chapter or who has reasonable cause to suspect that any person is in violation of this Chapter should report the relevant facts to the Board. Upon receipt of a charge or upon its own initiative, the Board may give notice of an administrative hearing pursuant to Chapter 150B of the General Statutes or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from criminal prosecution or civil liability based on that report unless the person knew the report was false or acted in reckless disregard of whether or not the report was false.

"§ **90C-36. Violations and penalties.**

Any person not licensed under this Chapter who holds himself or herself out to be licensed under this Chapter or who practices recreational therapy or therapeutic recreation shall be guilty of a Class 1 misdemeanor. Any fine imposed as a result of conviction shall not exceed five hundred dollars ($500.00).

"§ **90C-37. Enjoining illegal practices.**

(a) If the Board finds that a person is violating any of the provisions of this Chapter, it may apply in its own name to the superior court for a temporary or permanent restraining order or an injunction to prevent that person from continuing the illegal practices. The court is empowered to grant an injunction regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. All actions by the Board shall be governed by the Rules of Civil Procedure.

(b) The venue for actions brought under this Chapter shall be in the county where the defendant resides or the county where the violation occurs."

SECTION 3. Members serving on the North Carolina State Board of Therapeutic Recreation Certification on the effective date of this act shall continue to serve and complete their current terms on the North Carolina Recreational Therapy

Licensure Board established in G.S. 90C-23, as enacted in Section 2 of this act. The Governor shall appoint the physician member to serve a three-year term pursuant to G.S. 90C-23(b)(4), as enacted in Section 2 of this act. Members appointed thereafter shall serve three-year staggered terms.

SECTION 4. Any current State-certified person working within the scope of recreational therapy, as defined in G.S. 90C-22(7), as enacted in Section 2 of this act, as a recreational therapist or a recreational therapy assistant before January 30, 2006, may be exempt from all educational, examination, and experience requirements for initial licensure pursuant to this Chapter, as enacted in Section 2 of this act. In order to qualify for this exemption, an applicant must apply to the Board for licensure before January 15, 2008, and the applicant must be working within the scope of recreational therapy and previously certified by the Board at the time of application. The Board shall attempt in good faith to notify all current State-certified persons of the availability of this exemption and the deadlines for qualifying and applying for licensure under this act.

SECTION 5. This act becomes effective October 5, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:46 p.m. on the 8th day of September, 2005.

H.B. 1357 **Session Law 2005-379**

AN ACT AUTHORIZING THE ACUPUNCTURE LICENSING BOARD TO EMPLOY CERTAIN PROFESSIONAL ADVISORS; TO CLARIFY QUALIFICATIONS FOR INITIAL LICENSURE, LICENSE RENEWAL, AND INACTIVE, SUSPENDED, EXPIRED, AND LAPSED LICENSES; TO CLARIFY CONTINUING EDUCATION; AND TO INCREASE AND ESTABLISH CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-454 reads as rewritten:

"§ **90-454. Powers and duties of Board.**

The Board may:

(1) Deny, issue, suspend, and revoke licenses in accordance with rules adopted by the Board, and may collect fees, investigate violations of this Article, and otherwise administer the provisions of this Article.

(2) Sponsor or authorize other entities to offer continuing education programs, and approve continuing education requirements for license renewal.

(3) Establish requirements ~~for~~ for, collect fees from, and approve schools of acupuncture in this State. The requirements shall be at least as stringent as the core curricula standards of the Council of Colleges of Acupuncture and Oriental Medicine.

(4) Sue to enjoin violations of G.S. 90-452. The court may issue an injunction even though no person has yet been injured as a result of the unauthorized practice.

(5) Adopt and use a seal to authenticate official documents of the Board.

(6) Employ and fix the compensation of personnel and professional advisors, including legal counsel, as may be needed to carry out its functions, and purchase, lease, rent, sell, or otherwise dispose of personal and real property for the operations of the Board.

(7) Expend funds as necessary to carry out the provisions of this Article from revenues and interest generated by fees collected under this Article.

(8) Adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

(9) Establish practice parameters to become effective July 1, 1995. The practice parameters shall be applicable to general and specialty areas of practice. The Board shall review the parameters on a regular basis and shall require licensees to identify parameters being utilized, the plan of care, and treatment modalities utilized in accordance with the plan of care."

SECTION 2. G.S. 90-455 reads as rewritten:

"§ **90-455. Qualifications for license; ~~renewal.~~renewal; inactive, suspended, expired, or lapsed license.**

(a) Initial License. – To receive a license to practice acupuncture, a person shall meet all of the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) ~~Successfully complete~~Submit proof of successful completion of a licensing examination administered or approved by the Board.

(4) Provide documentary evidence of having met one of the following standards of education, training, or demonstrated experience:

a. ~~Successfully complete~~Successful completion of a three-year postgraduate acupuncture college or training program approved by the Board.

b. Continuous licensure to practice acupuncture by an agency of another state or another state whose qualifications for licensure meet or exceed those of this State for at least 10 years before application for licensure in this State during which time no disciplinary actions were taken or are pending against the applicant and submitting proof to the Board that the applicant has fulfilled at least an average of 20 continuing education units in acupuncture or health care-related studies for each of the 10 years preceding application for licensure.

(5) ~~Successfully complete~~Submit proof of successful completion of the Clean Needle Technique Course offered by the Council of Colleges of Acupuncture and Oriental Medicine.

(6) Be of good moral character.

(7) Is not currently or has not engaged in any practice or conduct that would constitute grounds for disciplinary action pursuant to G.S. 90-456.

(8) Submit a form signed by the applicant attesting to the intention of the applicant to adhere fully to the ethical standards adopted by the Board.

(b) Renewal of License. – The license to practice acupuncture shall be renewed every two years. Upon submitting all required declarations, documents, and fees

required by the Board for renewal, the applicant's license shall remain in good standing for a period of up to 120 days during which time the Board shall meet to review and act upon the application for renewal. To renew a license, ~~a person shall complete 40 hours of Board-approved Continuing Education Units within each renewal period.~~an applicant shall:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Upon request by the Board, submit proof of completion of 40 hours of Board-approved continuing education units within each renewal period.

(c) Inactive License. – A licensed acupuncturist who is not actively engaged in the practice of acupuncture in this State and who does not wish to renew the license may direct the Board to place the license on inactive status. A license may remain on inactive status for a period not to exceed eight years from the date the license was placed on inactive status. Upon an applicant's proof of completion of 40 hours of Board-approved continuing education units, payment of all fees, a determination by the Board that the applicant is not engaged in any prohibited activities that would constitute the basis for discipline as set forth in G.S. 90-456, and has not engaged in any of those prohibited activities during the period of time the license has been on inactive status, the Board may activate the license of the applicant.

(d) Suspended License. – A suspended license is subject to the renewal requirements of this section and may be renewed as provided in this section. This renewal does not entitle the licensed person to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended, until the license is reinstated. If a license revoked on disciplinary grounds is reinstated and requires renewal, the licensed person shall pay the renewal fee and any applicable late fee.

(e) Expired License. – A license that has expired as a result of failure to renew pursuant to subsection (b) of this section may be renewed no later than two years after its expiration. The date of renewal shall be the date the Board acts to approve the renewal. To apply for renewal of an expired license, the applicant shall:

(1) File an application for renewal on a form provided by the Board.

(2) Submit proof of completion of all continuing education requirements.

(3) Pay all accrued renewal fees, along with an expired license fee.

(f) Lapsed License. – A license that has lapsed as a result of not being renewed within two years after the license expired or not reactivated within eight years after the license lapsed is deemed inactive. A lapsed license may not be renewed, reactivated, or reinstated. A person with a lapsed license may apply to obtain a new license pursuant to subsection (a) of this section."

SECTION 3. G.S. 90-457 reads as rewritten:

"§ **90-457. Fees.**

The Board may establish fees, not to exceed the following ~~amounts, to cover the cost of services rendered:~~amounts:

(1) ~~For an application~~Application and an examination, one hundred dollars ($100.00).

(2) ~~For issuance~~Issuance of a license, five hundred dollars ($500.00).

(3) ~~For renewal~~Renewal of a license, three hundred dollars ($300.00).

(4) ~~For the late renewal~~Renewal of a license, an additional late fee of ~~seventy-five dollars ($75.00).~~two hundred dollars ($200.00).

(5) Duplicate license fee, twenty-five dollars ($25.00).
(6) Duplicate wall certificate fee, fifty dollars ($50.00).
(7) Labels for licensed acupuncturists, one hundred fifty dollars ($150.00).
(8) Returned check fee, forty dollars ($40.00).
(9) Licensure verification, forty dollars ($40.00).
(10) Name change, twenty-five dollars ($25.00).
(11) Continuing education program approval fee, fifty dollars ($50.00).
(12) Continuing education provider approval fee, two hundred dollars ($200.00).
(13) Initial school application fee, one thousand dollars ($1,000).
(14) Renewal school approval fee, seven hundred fifty dollars ($750.00).
(15) Inactive license renewal fee, fifty dollars ($50.00), payment due for each two-year extension."

SECTION 4. Article 30 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ **90-457.1. Continuing education.**

(a) Applicants for license renewal shall complete all required continuing education units during the two calendar years immediately preceding the license renewal date.

(b) The Board shall set the minimum hours for study of specific subjects within the scope of practice of acupuncture. The Board shall set the maximum hours for subjects that have content relating to any health service and are relevant to the practice of acupuncture. In addition to formally organized courses, the Board may approve courses, such as personal training in nonaccredited programs and teaching diagnosis and treatment, as long as these courses have received prior approval by the Board.

(c) For purposes of this Article, one continuing education unit is defined as one contact hour or 50 minutes.

(d) The Board may choose to audit the records of any licensee who has reported and sworn compliance with the continuing education requirement. The audit of any licensee shall not take place more than every two years.

(e) Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to expired status at the end of the renewal period.

(f) A licensee may apply to the Board for an extension of time to complete the portion of continuing education requirements that the licensee is unable to meet due to such unforeseeable events as military duty, family emergency, or prolonged illness. The Board may, at its discretion, grant an extension for a maximum of one licensing period. The Board shall receive the request no later than 30 days before the license renewal date. The applicant shall attest that the request is a complete and accurate statement, and the request shall contain the following:

(1) An explanation of the licensee's failure to complete the continuing education requirements.
(2) A list of continuing education courses and hours that the licensee has completed.
(3) The licensee's plan for satisfying the continuing education requirements."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:47 p.m. on the 8th day of September, 2005.

H.B. 1429 **Session Law 2005-380**

AN ACT TO PROVIDE FOR RECIPROCITY BY ELIMINATING THE APPLICATION FEE FOR A WINE SHIPPER PERMIT, TO CLARIFY THE LAW CONCERNING SPLIT-CASE FEES, AND TO TRANSFER THE NORTH CAROLINA GRAPE GROWERS COUNCIL TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.

(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
~~(36) Wine shipper permit – $100.00.~~"

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

"(a) A winery holding a federal basic wine manufacturing permit located within or outside of the State may apply to the Commission for issuance of a wine shipper permit that shall authorize the shipment of brands of fortified and unfortified wines identified in the application. The applicant shall not be required to pay an application fee for the wine shipper permit. A wine shipper permittee may amend the brands of wines identified in the permit application but shall file any amendment with the Commission. Any winery that applies for a wine shipper permit shall notify in writing any wholesalers that have been authorized to distribute the winery's brands within the State that an application has been filed for a wine shipper permit. A wine shipper permittee may sell and ship not more than two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for personal use only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine."

SECTION 3. G.S. 18B-1116 is amended by adding a new subsection to read:

"(c) As used in this section, the phrase "giving things of value" shall not include the dividing or removing of individual containers of alcohol from larger packages of alcohol or the delivery of such to the retail permittee."

SECTION 4.(a) Article 62 of Chapter 106 of the General Statutes is recodified as Part 2H of Article 10 of Chapter 143B of the General Statutes and reads as rewritten:

"~~Article 62.~~

"Part 2H. Grape Growers Council.

"§ ~~**106-750.**~~**143B-437.70. North Carolina Grape Growers Council – Creation; powers and duties.**

There is created the North Carolina Grape Growers Council of the Department of ~~Agriculture and Consumer Services.~~Commerce. The North Carolina Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;
(2) To assure orderly growth and development of North Carolina's grape and wine industry;
(3) To achieve public awareness of the quality of North Carolina grapes and wine;
(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;
(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;

(9) To contract for research services to improve viticultural and enological practices in North Carolina;

(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;

(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;

(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and

(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry.

"§ ~~106-751.~~143B-437.71. **North Carolina Grape Growers Council – Composition; terms; reimbursement.**

(a) The North Carolina Grape Growers Council shall consist of 11 members appointed by the ~~Commissioner of Agriculture~~Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The ~~Commissioner~~ Secretary shall ~~appoint, within 30 days of the effective date of this act, four members for three-year terms, four members for two-year terms, and three members for one-year terms. Thereafter, members shall be appointed for~~appoint members for staggered four-year ~~terms and~~ terms. Members shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the ~~Commissioner~~ Secretary for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of ~~Agriculture and Consumer Services.~~Commerce.

(d) The ~~Commissioner of Agriculture~~Secretary of Commerce shall appoint a ~~chairman~~ chair who shall serve at the pleasure of the ~~Commissioner.~~Secretary.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the ~~chairman~~ chair or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business."

SECTION 4.(b) Persons serving on the North Carolina Grape Growers Council as of the effective date of this section shall continue to serve for the remainder of their unexpired terms. The Secretary of Commerce shall appoint members to the North Carolina Grape Growers Council as current terms expire and as vacancies arise.

SECTION 4.(c) G.S. 105-113.81A reads as rewritten:

"§ **105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of ~~Agriculture and Consumer Services~~Commerce the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section shall not exceed three hundred fifty thousand dollars ($350,000) per fiscal year. The Department of ~~Agriculture and Consumer Services~~Commerce shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of ~~Agriculture and Consumer Services~~Commerce under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

SECTION 4.(d) The Department of Commerce shall consult and coordinate with the Department of Agriculture and Consumer Services and North Carolina State University to serve the needs of North Carolina grape growers.

SECTION 5. This act is effective when it becomes law, and Sections 1 and 2 of this act apply to wine shipper permit applications submitted on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:47 p.m. on the 8th day of September, 2005.

S.B. 1013 **Session Law 2005-381**

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCREASE FEES AND AMENDING CERTAIN PROVISIONS RELATING TO COST RECOVERY UNDER THE LAWS REGULATING GENERAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(a) reads as rewritten:

"(a) Anyone seeking to be licensed as a general contractor in this State shall file an application for an examination on a form provided by the Board, at least 30 days before any regular or special meeting of the ~~Board accompanied by~~Board. The Board may require the applicant to pay the Board or a provider contracted by the Board an examination fee ~~of fifty dollars ($50.00)~~not to exceed one hundred dollars ($100.00) and ~~by the sum of one hundred dollars ($100.00)~~pay to the Board a license fee not to exceed one hundred twenty-five dollars ($125.00) if the application is for an unlimited license, ~~the sum of seventy-five dollars ($75.00)~~one hundred dollars ($100.00) if the application is for an intermediate ~~license or the sum of fifty dollars ($50.00)~~license, or seventy-five dollars ($75.00) if the application is for a limited ~~license; the fees and sum~~ license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall

be entitled to act as general contractor for any single project with a value of up to seven hundred thousand dollars ($700,000); the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to three hundred fifty thousand dollars ($350,000); and the license certificate shall be classified in accordance with this section. Before being entitled to an examination an applicant must show to the satisfaction of the Board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this State or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant: Provided, no applicant shall be refused the right to an examination, except in accordance with the provisions of Chapter 150B of the General Statutes."

SECTION 2. G.S. 87-10(d) reads as rewritten:

"(d) Anyone failing to pass this examination may be reexamined at any regular meeting of the Board upon payment of an examination ~~fee of fifty dollars ($50.00).~~fee. Anyone requesting to take the examination a third or subsequent time shall submit a new application with the appropriate examination and license fees."

SECTION 3. G.S. 87-10(e) reads as rewritten:

"(e) A certificate of license shall expire on the thirty-first day of December following its issuance or renewal and shall become invalid 60 days from that date unless renewed, subject to the approval of the Board. Renewals may be effected any time during the month of January without reexamination, by the payment of a fee to the secretary of the Board. The fee shall not exceed ~~one hundred dollars ($100.00)~~one hundred twenty-five dollars ($125.00) for an unlimited license, ~~seventy-five dollars ($75.00)~~one hundred dollars ($100.00) for an intermediate ~~license~~ license, and ~~fifty dollars ($50.00)~~seventy-five dollars ($75.00) for a limited license. No later than November 30 of each year, the Board shall mail written notice of the amount of the renewal fees for the upcoming year to the last address of record for each general contractor licensed pursuant to this Article. Renewal applications shall be accompanied by evidence of continued financial responsibility satisfactory to the Board. Renewal applications received by the Board after January shall be accompanied by a late payment of ten dollars ($10.00) for each month or part after January. After a lapse of two years no renewal shall be effected and the applicant shall fulfill all requirements of a new applicant as set forth in this section."

SECTION 4. G.S. 87-11 is amended by adding the following new subsection to read:

"(e) The Board shall be entitled to recover its reasonable administrative costs associated with the investigation and prosecution of a violation of this Article or rules or regulations of the Board up to a maximum of five thousand dollars ($5,000) for any licensee or qualifying party found to have committed any of the following:

(1) Fraud or deceit in obtaining a license.

(2) Gross negligence, incompetency, or misconduct in the practice of general contracting.

(3) Willful violation of any provision of this Article."

SECTION 5. G.S. 87-13.1 reads as rewritten:

"§ **87-13.1. Board may seek injunctive relief.**

Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. The court may award the Board its reasonable costs associated with the investigation and prosecution of the violation."

SECTION 6. Sections 1, 2, 3, and 6 of this act are effective when it becomes law. Sections 4 and 5 become effective October 1, 2005, and apply to violations that occur on or after that date.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 3:25 p.m. on the 8th day of September, 2005.

H.B. 747 **Session Law 2005-382**

AN ACT TO CLARIFY THE DEFINITIONS OF THE STATE ROAD SYSTEMS AND TO REQUIRE ANNUAL WORK PLANS FOR MAINTENANCE OF STATE STREETS AND HIGHWAYS WITHIN MUNICIPALITIES AND TO MODIFY THE AUTHORIZATION GIVEN FOR THE CONTRACT OF THE HERBERT C. BONNER REPLACEMENT BRIDGE PROJECT AT OREGON INLET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.2 reads as rewritten:

"§ **136-44.2. Budget and appropriations.**

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, ~~urban,~~ and State parks road systems. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits ~~which~~ that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. ~~The State urban system shall include all portions of the State highway system located within municipal corporate limits.~~ The State parks system shall include all State parks roads and parking lots ~~which~~ that are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for

each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for ~~primary, secondary, and urban~~ primary and secondary road systems are made, based upon the same proportion as is appropriated to each system."

SECTION 2. G.S. 136-66.1 reads as rewritten:

"§ **136-66.1. Responsibility for streets inside municipalities.**

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. – The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently

and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways. Each highway division shall develop an annual work plan for maintenance and contract resurfacing, within their respective divisions, consistent with the needs, inasmuch as possible, as identified in the report developed in accordance with G.S. 136-44.3. In developing the annual work plan, the highway division shall give consideration to any special needs or information provided by the municipalities within their respective divisions. The plan shall be made available to the municipalities within the respective divisions upon request.

(2) The Municipal Street System. – In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for this system.

(3) Maintenance of State Highway System by Municipalities. – Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair, improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work. The city or town under contract with the Department shall develop an annual work plan for maintenance of the State highway system consistent with the needs, inasmuch as possible, as identified in the report developed in accordance with G.S. 136-44.3. The annual work plan shall be submitted to the respective division engineers and shall be mutually agreeable to both parties.

(4) If the governing body of any municipality determines that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making any of the following improvements on streets that are within its corporate limits and form a part of the State highway system:

a. Construction of curbing and guttering.

b. Adding of lanes for automobile parking.

c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system.

d. Constructing sidewalks.

e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality under this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality."

SECTION 3. If House Bill 253, 2005 General Assembly, becomes law, then G.S. 136-89.183B, as enacted by that act, reads as rewritten:

"§ **136-89.183B. Accelerated Herbert C. Bonner Bridge Replacement Project.**

(a) Contract for Accelerated Construction of the Herbert C. Bonner Replacement Bridge Project. – The Department of Transportation shall implement all reasonable measures to expedite completion of environmental reviews required by the National Environmental Policy Act. Within 90 days of receiving an approved Record of Decision from the Federal Highway Administration, the Department shall contract with a single private firm to ~~design, obtain all necessary permits for, and construct~~ design and build a replacement bridge for the Herbert C. Bonner Bridge at Oregon Inlet, in accordance with G.S. 136-28.11, in order to ~~provide accelerated,~~ expedite and accelerate the efficient, ~~and~~ cost effective completion of the project.

(b) Replacement Bridge; Termini. – The General Assembly recommends that the replacement bridge constructed pursuant to this section shall be ~~a replacement bridge,~~ located with north and south termini located in general proximity to the termini of the existing Herbert C. Bonner Bridge. It is recognized, however, that the preferred alternative for the bridge location cannot be determined prior to compliance with all federal and State laws and regulations.

(c) Department to Report on Project. ~~– The Department shall prepare a request for proposals from private firms to complete the bridge project described in this section, and submit the request for proposals to the Joint Legislative Transportation Oversight Committee for review and comment, within 90 days after the effective date of this act. The Department shall issue the request for proposals to the public 30 days after submittal to the Committee for review.~~ The Department shall report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated bridge project described in this section."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:20 p.m. on the 13th day of September, 2005.

H.B. 1085 **Session Law 2005-383**

AN ACT TO REQUIRE A DEFENDANT ARRESTED FOR USING DOGS FOR FIGHTING TO POST A DEPOSIT TO THE ANIMAL SHELTER TO PAY FOR THE DOGS' KEEP DURING THE PERIOD PRIOR TO ADJUDICATION OF THE CHARGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 19A of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Care of Dogs Illegally Used for Fighting.

"**§ 19A-70. Care of dogs illegally used for fighting.**

(a) In every arrest under G.S. 14-362.2, if an animal shelter takes custody of dogs illegally used for fighting, the animal shelter may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses expected to be incurred by the animal shelter in caring for and providing for the dogs pending the disposition of the charges. For purposes of this section, 'reasonable expenses' includes the cost of providing food, water, shelter, and care, including medical care, for at least 30 days.

(b) Upon receipt of a petition, the court shall set a hearing on the petition. The hearing shall be conducted no less than 10 and no more than 15 business days after the petition is filed. The animal shelter shall mail written notice of the hearing and a copy of the petition to the defendant at the address contained in the criminal charges. If the defendant is in a local detention facility at the time the petition is filed, the animal shelter shall also provide notice to the custodian of the detention facility.

(c) The court shall set the amount of funds necessary for 30 days' care after taking into consideration all of the facts and circumstances of the case, including the recommendation of the animal shelter and the estimated cost of caring for the dogs as well as the defendant's ability to pay. If the court determines that the defendant is unable to deposit funds, the court may consider issuing an order under subsection (f) of this section.

Any order for funds to be deposited pursuant to this section shall state that if the animal shelter files an affidavit with the clerk of superior court, at least two business days prior to the expiration of a 30-day period, stating that, to the best of the shelter's knowledge, the criminal case against the defendant has not yet been resolved, the order shall be automatically renewed every 30 days until the criminal case is resolved.

(d) If the court orders that funds be deposited, the amount of funds necessary for 30 days shall be posted with the clerk of superior court. The defendant shall also deposit the same amount with the clerk of superior court every 30 days thereafter until the criminal charges are resolved, unless the defendant requests a hearing no less than five business days prior to the expiration of a 30-day period. If the defendant fails to deposit the funds within five business days of the initial hearing, or five business days of the expiration of a 30-day period, the dogs are forfeited by operation of law. If funds have

been deposited in accordance with this section, the animal shelter may draw from the funds the actual costs incurred in caring for the dogs.

In the event of forfeiture, the animal shelter may determine whether any of the dogs are suitable for adoption and whether adoption can be arranged for any of the dogs. The dogs may not be adopted by the defendant or by any person residing in the defendant's household, and the animal shelter shall notify any persons adopting the dogs of the liability provisions for owners of dangerous dogs under Article 1A of Chapter 67 of the General Statutes. If no adoption can be arranged after the forfeiture, or the dogs are unsuitable for adoption, the shelter shall humanely euthanize the dogs.

(e) The deposit of funds shall not prevent the animal shelter from disposing of the dogs prior to the expiration of the 30-day period covered by the deposit if the court makes a final determination of the charges against the defendant. Upon the adjudication of the charges, the defendant is entitled to a refund for any portion of the deposit not incurred as expenses by the animal shelter. A person who is adjudicated not guilty of the charges under G.S. 14-362.2 shall be entitled to a full refund of the deposit.

(f) Pursuant to subsection (c) of this section, the court may order a defendant to provide necessary food, water, shelter, and care, including any necessary medical care, for any dogs that are the basis of the charges against the defendant without the removal of the dogs from the existing location and until the charges against the defendant are adjudicated. If the court issues such an order, the court shall provide for an animal control officer or other law enforcement officer to make regular visits to the location to ensure that the dogs are receiving necessary food, water, shelter, and care, including any necessary medical care, and to impound the animals if they are not receiving those necessities."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:21 p.m. on the 13th day of September, 2005.

H.B. 1136 **Session Law 2005-384**

AN ACT TO REDUCE THE RELEASE OF MERCURY INTO THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 6. Mercury Switch Removal.

"**§ 130A-310.50. Definitions.**

As used in this Part:

(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

(4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.

(5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

(6) "Scrap metal recycling facility" means a fixed location where machinery and equipment are used to process scrap metal into specific grades of scrap metal for sale and whose primary product is scrap iron, scrap steel, or nonferrous metallic scrap.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(8) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle.

"§ **130A-310.51. Purpose.**

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State.

"§ **130A-310.52. Mercury minimization plan.**

(a) The Department shall develop and administer a mercury minimization plan to achieve the goal of having a capture rate of at least ninety percent (90%). In preparing the plan, the Department shall consult with manufacturers of vehicles, who shall participate in the development of the plan on an advisory basis. To the extent practicable, the mercury minimization plan shall utilize the currently available end-of-life vehicle recycling infrastructure. To the extent adequate, affordable, and environmentally sound end-of-life vehicle recycling infrastructure is unavailable, the plan shall provide for the development of this infrastructure.

(b) A plan developed under subsection (a) of this section shall include the following:

(1) A compilation of the make, model, and year of any vehicle that was sold or offered for sale by the vehicle manufacturer and contains one or more mercury switches and a description and the location of each mercury switch in the vehicle. A vehicle manufacturer shall report to the Department the information needed to make the compilation.

(2) A description of all safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles. A vehicle manufacturer shall report to the Department the information needed to make the description.

(3) A presumption that if the manufacturer does not know or is uncertain as to whether or not a switch contains mercury, the switch does contain mercury.

(4) A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a mercury switch.

(5) Educational materials to assist a vehicle recycler or a scrap metal recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life vehicles. The materials shall include information on hazards related to mercury and on the proper handling of mercury.

(6) A method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to permitted recycling, storage, or disposal facilities. To the extent adequate, affordable, and environmentally sound mercury switch disposal technology is unavailable, a method for the temporary storage of mercury switches.

"**§ 130A-310.53. Removal of mercury switches from end-of-life vehicles.**

(a) A vehicle recycler that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility shall remove all mercury switches identified in the mercury minimization plan prior to delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is inaccessible, the fact that the mercury switch remains in the vehicle shall be noted on the vehicle recycler's invoice.

(b) A scrap metal recycling facility that accepts an end-of-life vehicle that has not been flattened, crushed, baled, or shredded and that contains mercury switches shall remove the mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded unless the mercury switch is inaccessible.

(c) A mercury switch is inaccessible if, due to the condition of the vehicle, the switch cannot be removed in accordance with the mercury minimization plan and removal of the switch would significantly increase the risk of a release of mercury into the environment.

(d) A vehicle recycler or scrap metal recycling facility that removes mercury switches pursuant to subsection (a) or (b) of this section shall make quarterly reports to the Department on the following:

(1) The number of vehicles that it processed for recycling.

(2) The number of vehicles from which it removed a mercury switch by make.

(3) The number of vehicles for which it could not remove the mercury switch because the switch was inaccessible.

(e) Mercury switches that are removed from end-of-life vehicles are considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1 July 2004 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste.

"**§ 130A-310.54. Funds to implement plan.**

(a) The Mercury Pollution Prevention Account is established in the Department. Revenue is credited to the Account from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury Pollution Prevention Account shall be used to reimburse the Department and others for costs incurred in implementing the mercury minimization plan. The reimbursable costs are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle recycler or scrap metal recycling facility pursuant to this Article.

(2) Costs incurred by the Department in administering the plan.

(c) The Department shall reimburse vehicle recyclers and scrap metal recycling facilities based on the quarterly reports submitted under G.S. 130A-310.53. The Department may request any information needed to determine the accuracy of the reports.

"**§ 130A-310.55. Violations of Article; enforcement.**

(a) It is unlawful for a person to do any of the following:

(1) Knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed, in any manner that would prevent or significantly hinder the removal of a mercury switch.

(2) Willfully fail to remove a mercury switch when the person is required to do so.

(3) Knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(4) Obtain a mercury switch from another source and falsely report that it was removed from a vehicle processed for recycling.

(b) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter.

"**§ 130A-310.56. Evaluation of vehicle design changes that affect mercury recyclability; reporting requirements.**

(a) Each vehicle manufacturer shall, either individually or as part of a group, submit an annual report to the Department that describes in detail the status of vehicle design changes that are intended to facilitate recycling of vehicle components that contain mercury. The report is due on or before 1 July. At a minimum, the report shall include all of the following:

(1) For each make and model for the upcoming model year, a list of all vehicle components that contain mercury.

(2) A description of all design changes that each manufacturer has implemented for the upcoming model year or plans to implement in future model years to reduce or eliminate vehicle components that contain mercury, the achieved or anticipated amount of each reduction.

(3) A summary of all policies that each manufacturer has implemented or will implement to ensure that the manufacturers' vehicles are designed to be recycled in a safe, cost-effective, and environmentally sound manner.

(4) A summary of any recommendations, complaints, or reports that the manufacturer has received within the previous calendar year from vehicle recyclers, scrap metal recycling facilities, government entities, or other persons, as well as any other information available to the manufacturer, regarding vehicle design features that adversely affect the recyclability of vehicle components that contain mercury.

(b) A vehicle manufacturer or group of vehicle manufacturers that submits the report required by subsection (a) of this section may designate any information in the report that constitutes a trade secret, as defined in G.S. 66-152, as confidential information in accordance with G.S. 132-1.2. Information so designated shall be protected as provided in G.S. 130A-304.

(c) The Department may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury. The Department may conduct hearings from time to time to receive public comment regarding vehicle design changes that affect recycling of vehicle components that contain mercury. The Department may develop recommendations as to changes in vehicle design that would further promote the recyclability of these components. If the Department develops recommendations pursuant to this subsection, it shall report these recommendations, together with its findings and any legislative proposals, to the Environmental Review Commission.

"**§ 130A-310.57. Report on plan.**

The Department shall publish an annual report on the mercury minimization plan on or before November 1. The report shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.

(2) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation.

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.

(4) A statement that details the costs required to implement the mercury minimization plan.

"**§ 130A-310.58. Adoption of rules; administrative procedure.**

(a) The Department may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part."

SECTION 2. If Senate Bill 622, 2005 General Assembly, becomes law, then G.S. 20-85, as amended by Section 44.1 of that act, reads as rewritten:

"**§ 20-85. Schedule of fees.**

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title ..... ~~$39.00~~$40.00

(2) Each application for duplicate or corrected certificate of title ..... ~~14.00~~15.00

(3) Each application of repossessor for certificate of title ..... ~~14.00~~15.00

(4) Each transfer of registration 15.00

(5) Each set of replacement registration plates 15.00

(6) Each application for duplicate registration card..... 15.00

(7) Each application for recording supplementary lien..... ~~14.00~~15.00

(8) Each application for removing a lien from a certificate of title ..... ~~14.00~~15.00

(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale..... ~~14.00~~15.00

(10) Each application for a salvage certificate of title made by an insurer 15.00

(11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 ..... 25.00.

(a1) ~~An additional one~~One dollar ($1.00) of the fee ~~shall be~~ imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this ~~section. The fees collected pursuant to this~~ section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional one dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Pollution Prevention Account in the Department of Environment and Natural Resources.

(b) The fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5.

(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

SECTION 3. The Commission for Health Services shall amend 15A NCAC 13A .0119 to adopt rules governing the management of waste mercury-containing devices, as defined in the Notice of Proposed Rulemaking published on 12 June 2002 in the Federal Register, Volume 67, Number 113, Pages 40507 through 40528, as universal waste.

SECTION 4. Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July 2006. Section 2 of this act becomes effective 1 October 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January 2006. This act expires on 1 July 2026.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:22 p.m. on the 13th day of September, 2005.

H.B. 1468 **Session Law 2005-385**

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO DETERMINE CERTAIN TELECOMMUNICATION SERVICE PROVIDERS TO BE THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether

local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

~~Each~~ Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, ~~1995, until otherwise determined by the Commission.~~1995. In continuing this State's commitment to universal service, the

Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal ~~services, the person that should be the universal service provider,~~services, and whether universal service should be funded through interconnection rates or through some other funding ~~mechanism.~~mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

SECTION 2. G.S. 62-110 is amended by adding three new subsections to read:

"(f4) When any telecommunications service provider enters into an agreement to provide local exchange service for a subdivision or other area where access to right-of-way for the provision of local exchange service by other telecommunications service providers has not been granted coincident with any other grant of access by the property owner, the telecommunications service provider entering into the agreement shall be the universal service provider in the subdivision or other area. If the local exchange company for the franchise area or territory in which the subdivision or other area is located is not a party to the agreement, the local exchange company shall be relieved of any universal service provider obligation for that subdivision or other area. In that case, the local exchange company and all other telecommunications service providers shall retain the option, but not the obligation, to serve customers in the subdivision or other area. The local exchange company shall provide written notification to the appropriate State agency that it is no longer the universal service provider for the subdivision or other area. The appropriate State agency shall retain the right to redesignate a local exchange company or telecommunications service provider as the universal service provider in accordance with the provisions of subsection (f5) of this section.

(f5) If the appropriate State agency finds, upon hearing, that the telecommunications service provider that entered into the agreement, or its successor in interest, is no longer willing or no longer able to provide adequate services to the subdivision or other area, the appropriate State agency may redesignate the local exchange company for the franchise area or territory in which the subdivision or other area is located, or another telecommunications service provider, to be the universal service provider for the subdivision or other area. If the redesignated local exchange company is subject to price regulation or other alternative regulation under G.S. 62-133.5, it may treat the costs incurred in extending its facilities into the subdivision or other area as exogenous to that form of regulation and may, subject to providing written notice to the Commission, adjust its rates to recover these costs on an equitable basis from its customers whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to review by the Commission in a complaint proceeding initiated by any interested party pursuant to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending its facilities into the subdivision or other area in the form of a surcharge,

subject to Commission approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a), without having to file a general rate case proceeding. During the period that a telecommunications service provider is serving as a universal service provider and prior to the redesignation of a local exchange company as the universal service provider as provided for herein, for the purposes of the appropriate State agency's periodic certification to the Federal Communications Commission in matters regarding eligible telecommunications carrier status, a local company's status shall not be deemed to affect its eligibility to be an eligible telecommunications carrier, and the appropriate State agency shall so certify.

(f6) For purposes of subsections (f4) and (f5) of this section, the following definitions are applicable:

(1) "Appropriate State agency" means the Commission for purposes of any subdivision or other area within the franchise area of a local exchange company, and the Rural Electrification Authority for the purposes of any subdivision or other area within the franchise area or territory of a telephone membership corporation.

(2) "Local exchange company" means a local exchange company subject to price regulation, or other alternative regulation or rate base regulation by the Commission or a telephone membership corporation organized under G.S. 117-30.

(3) "Telecommunications service provider" means a competing local provider, or any other person providing local exchange service by means of voice-over-Internet protocol, wireless, power line, satellite, or other nontraditional means, whether or not regulated by the Commission, but the term shall not include local exchange companies or telephone membership corporations."

SECTION 3. This act is effective when it becomes law. Section 2 of this act applies to agreements entered into before, on, or after the effective date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:23 p.m. on the 13th day of September, 2005.

H.B. 1096 **Session Law 2005-386**

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES TO: (1) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS; (2) MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS; (3) CHANGE THE NAME OF THE WETLANDS RESTORATION PROGRAM TO THE ECOSYSTEM ENHANCEMENT PROGRAM AND TO CHANGE THE NAME OF THE WETLANDS RESTORATION FUND TO THE ECOSYSTEM RESTORATION FUND; (4) AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO MODIFY THE INSPECTION SCHEDULE FOR ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC; (5) AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES; (6) PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE

GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION; (7) MAKE CLARIFYING AMENDMENTS TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973; (8) CHANGE THE NAME OF THE AIR QUALITY COMPLIANCE ADVISORY PANEL TO THE SMALL BUSINESS ENVIRONMENTAL ADVISORY PANEL; AND (9) PROVIDE EXEMPTIONS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS FOR CERTAIN PERSONS AND CERTAIN ACTIVITIES.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS.

SECTION 1.1. G.S. 90A-55 reads as rewritten:

"§ **90A-55. State Board of Sanitarian Examiners; appointment and term of office.**

(a) Board Membership. – The Board shall consist of nine members: the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health ~~Division~~ of the Department of Environment and Natural Resources, and four practicing sanitarians who qualify by education and experience for registration under this Article, three of whom will represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of Sanitarian Examiners shall be appointed by the Governor for a term of four years. ~~Members of the Board serving on October 1, 1982, shall serve until the expiration of the terms for which they were appointed.~~ As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health ~~Section,~~ Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for his consideration in appointments.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

SECTION 1.2. G.S. 102-1.1 reads as rewritten:

"§ **102-1.1. Name and description in relation to 1983 North American Datum.**

From and after the date and time the North Carolina Geodetic Survey Section in the Division of Land Resources ~~Division~~ of the Department of Environment and Natural Resources receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of 79°- 00' west from Greenwich and standard parallels of latitude of 34° – 20' and 36º – 10' north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured

easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian 79° – 00' west from Greenwich at the intersection of the parallels 33° – 45' north latitude, such origin being given the coordinates x = 609,601.22 metres, y = 0 metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927."

SECTION 1.3. G.S. 105-277.7(a) reads as rewritten:

"(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board shall consist of the following additional members, to serve ex officio:

(1) A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.

(2) A representative of the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources, designated by the Director of that Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm ~~Bureau,~~Bureau Federation, Inc., designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(8) A representative of the North Carolina Forestry Association, designated by the President of the Association."

SECTION 1.4. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days

from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's present-use value classification when the owner submits the requested information unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 1.5. G.S. 113-56.1 reads as rewritten:

"§ **113-56.1. Overtime compensation for forest fire fighting.**

The Department shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Division of Forest Resources ~~Division~~ involved in fighting forest fires."

SECTION 1.6. G.S. 113-60.32(1) reads as rewritten:

"(1) 'Fire fighter' means an employee of the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources who engages in fire suppression duties."

SECTION 1.7. G.S. 113-291.10(a)(4) reads as rewritten:

"(4) The Director of the Division of Soil and Water Conservation ~~Division~~ of the Department of Environment and Natural Resources, or a designee;"

SECTION 1.8. G.S. 120-70.62 reads as rewritten:

"§ **120-70.62. Powers and duties.**

The Commission shall have the following powers and duties:

….

(4) To evaluate actions of the Division of Marine Fisheries ~~Division~~ of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

…."

SECTION 1.9. G.S. 120-70.63 reads as rewritten:

"§ **120-70.63. Additional powers.**

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either ~~cochairman,~~cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission."

SECTION 1.10. Section 14 of S.L. 2004-163 reads as rewritten:

"**SECTION 14.** Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater Management Rule, as defined in Section ~~11~~ 12 of this act, and the text of Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002 as notes to G.S. 143-214.7."

PART II. MODIFY REPORTING REQUIREMENTS.

SECTION 2.1. G.S. 143-215.8C is repealed.

SECTION 2.2. G.S. 143-215.107C reads as rewritten:

"§ **143-215.107C. State agency goals, plans, duties, and reports.**

…

(d) The Department of Administration, the Office of State Personnel, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by State employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of carpooling, vanpooling, public transportation, incentives, and other appropriate strategies. The ~~Office of State Personnel~~Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(e) The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by private sector employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of incentives for both private sector employees and ~~employers,~~ employers to promote carpooling, vanpooling, use of public transportation, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(f) The Office of State Personnel shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/Telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. ~~The Office of State Personnel shall report on progress in implementing this section to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.~~"

SECTION 2.3. The primary investigator or researcher for the Neuse River Modeling and Monitoring Project shall provide a final report summarizing the findings and outcomes of the Project to the Environmental Review Commission no later than 1 November 2005.

PART III. RENAME WETLANDS RESTORATION PROGRAM AS THE ECOSYSTEM ENHANCEMENT PROGRAM.

SECTION 3.1. G.S. 143-214.8 reads as rewritten:

"§ **143-214.8. ~~Wetlands Restoration~~Ecosystem Enhancement Program: established.**

The ~~Wetlands Restoration~~Ecosystem Enhancement Program is established within the Department of Environment and Natural Resources. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall be developed by the Department as a nonregulatory statewide ~~wetlands restoration~~ecosystem enhancement program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall consist of the following components:

(1) Restoration and perpetual maintenance of wetlands.
(2) Development of restoration plans.
(3) Landowner contact and land acquisition.
(4) Evaluation of site plans and engineering studies.
(5) Oversight of construction and monitoring of restoration sites.
(6) Land ownership and management.
(7) Mapping, site identification, and assessment of wetlands functions.
(8) Oversight of private wetland mitigation banks to facilitate the components of the ~~Wetlands Restoration~~Ecosystem Enhancement Program."

SECTION 3.2. G.S. 143-214.9 reads as rewritten:

"§ **143-214.9. ~~Wetlands Restoration~~Ecosystem Enhancement Program: purposes.**

The purposes of the program are as follows:

(1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the ~~Wetlands Restoration~~Ecosystem Enhancement Program.
(2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344.
(3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.
(4) To increase the ecological effectiveness of compensatory mitigation.
(5) To achieve a net increase in wetland acres, functions, and values in each major river basin.
(6) To foster a comprehensive approach to environmental protection."

SECTION 3.3. G.S. 143-214.10 reads as rewritten:

"§ **143-214.10. ~~Wetlands Restoration~~Ecosystem Enhancement Program: development and implementation of basinwide restoration plans.**

Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational

opportunities within each of the 17 major river basins in the State. ~~Beginning July 1, 1997, the~~ The Department shall develop and ~~begin implementing~~implement a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water Quality."

SECTION 3.4. G.S. 143-214.11 reads as rewritten:

"§ **143-214.11. ~~Wetlands Restoration~~Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definition. – For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the ~~Wetlands Restoration~~Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to Applicant. – An applicant may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United ~~State~~ States Army Corps of Engineers:

(1) Payment of a fee established by the Department into the ~~Wetlands~~ Ecosystem Restoration Fund established in G.S. 143-214.12.

(2) Donation of land to the ~~Wetlands Restoration~~Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(3) Participation in a private wetlands mitigation bank.

(4) Preparing and implementing a wetlands restoration plan.

(e) Payment Schedule. – A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.

(f) Mitigation Banks. – State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3."

SECTION 3.5. G.S. 143-214.12 reads as rewritten:

"§ **143-214.12. ~~Wetlands Restoration~~ Ecosystem Enhancement Program: ~~Wetlands~~ Ecosystem Restoration Fund.**

(a) ~~Wetlands~~ Ecosystem Restoration Fund. – The ~~Wetlands~~ Ecosystem Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The ~~Wetlands~~ Ecosystem Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the ~~Wetlands~~ Ecosystem Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the ~~Wetlands Restoration~~Ecosystem Enhancement Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. – A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § ~~1344,~~ 1344 may contribute to the ~~Wetlands Restoration~~Ecosystem Enhancement ~~Program,~~ Program in order to comply with conditions to, or terms of, the permit or ~~authorization,~~ authorization if participation in the ~~Wetlands Restoration~~Ecosystem Enhancement Program will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the ~~Wetlands~~ Ecosystem Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. – The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment."

SECTION 3.6. G.S. 143-214.13 reads as rewritten:

"§ **143-214.13. ~~Wetlands Restoration~~Ecosystem Enhancement Program: reporting requirement.**

(a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the ~~Wetlands Restoration~~Ecosystem Enhancement Program and its use of the funds in the ~~Wetlands~~ Ecosystem Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the ~~Wetlands~~ Ecosystem Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's ~~Wetlands Restoration~~Ecosystem Enhancement Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the ~~Wetlands Restoration~~Ecosystem Enhancement Program. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section."

SECTION 3.7. G.S. 143-214.14(c) reads as rewritten:

"(c) Legislative Goals and Policies. – It is the goal of the General Assembly that, to the extent practicable, the State shall adopt water quality protection plans that are developed and implemented in cooperation and coordination with local governments and that the State shall adopt water quality protection requirements that are proportional to the relative contributions of pollution from all sources in terms of both the loading and proximity of those sources. Furthermore, it is the goal of the General Assembly to encourage and support State-local partnerships for improved water quality protection through the provision of technical and financial assistance available through the Clean Water Management Trust Fund, the ~~Wetlands~~ Ecosystem Enhancement Program, the Ecosystem Restoration Fund, water quality planning and project grant programs, the State's revolving loan and grant programs for water and wastewater facilities, other funding sources, and future appropriations. The Commission shall implement these goals in accordance with the standards, procedures, and requirements set out in this section."

PART IV. AMEND INSPECTION SCHEDULE FOR FOOD SERVICE ESTABLISHMENTS.

SECTION 4.1. G.S. 130A-249 reads as rewritten:

"§ **130A-249. Inspections; report and grade card.**

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each ~~restaurant at least quarterly, except that the quarterly inspection requirement shall not apply to temporary food establishments.~~food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards

showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary."

SECTION 4.2. The Commission for Health Services shall adopt rules to implement the provisions of Section 4.1 of this act so that the rules become effective on or before 1 January 2007.

PART V. AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES.

SECTION 5. G.S. 143B-336.1 reads as rewritten:

"§ **143B-336.1. Special Zoo Fund.**

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, ~~and~~ for the replacement of tram equipment as required to maintain adequate service to the ~~public.~~public, and for marketing the Zoological Park. The Special Zoo Fund may also be used to match private funds ~~which~~ that are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

PART VI. PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION.

SECTION 6. G.S. 120-70.61 reads as rewritten:

"§ **120-70.61. Membership; ~~cochairmen;~~cochairs; vacancies; quorum.**

(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman.~~cochair.

(c) Except as otherwise provided in this section, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs ~~Vacancies occurring~~ on the Commission shall be filled in the same manner as ~~initial appointments.~~the original appointment.

(d) A quorum of the Commission shall consist of eight members."

PART VII. AMENDMENTS TO SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

SECTION 7.1. G.S. 113A-54.1(a) reads as rewritten:

"§ **113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion and sedimentation control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Commission shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface

waters. The Director of the Division of Land Resources may disapprove an erosion and sedimentation control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion and sedimentation control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

SECTION 7.2. G.S. 113A-57 reads as rewritten:

"§ **113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle ~~which~~ that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise

provided with ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a ~~tract~~ tract, ~~comprising more than one acre, if more than one acre is uncovered,~~ the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract ~~if more than one acre is to be uncovered~~ unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for ~~such~~ the activity is filed with the agency having ~~jurisdiction.~~jurisdiction and approved by the agency. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

SECTION 7.3. G.S. 113A-65.1(h) reads as rewritten:

"(h) The Attorney General shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint."

PART VIII. RENAME AIR QUALITY COMPLIANCE ADVISORY PANEL.

SECTION 8.1. G.S. 143-215.3A(b) reads as rewritten:

"(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the ~~Air Quality Compliance~~Small Business Environmental Advisory Panel, the ombudsman for the Small Business Stationary

Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses."

SECTION 8.2. Part 15 of Article 7 of Chapter 143B of the General Statutes reads as rewritten:

"Part 15. ~~Air Quality Control.~~Small Business Environmental Advisory Panel.

"§ **143B-317. ~~Air Quality Compliance~~Small Business Environmental Advisory Panel – creation; powers and duties.**

There is hereby created the ~~Air Quality Compliance~~Small Business Environmental Advisory Panel of the Department of Environment and Natural Resources. The ~~Air Quality Compliance~~Small Business Environmental Advisory Panel shall have the following functions and duties:

(1) To render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.

(2) To make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et. seq.; the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.; and the Equal Access to Justice Act, 5 U.S.C. §§ 504 et seq.

(3) To review information for small business stationary sources to assure such information is understandable by the layperson.

"§ **143B-318. ~~Air Quality Compliance~~Small Business Environmental Advisory Panel – members; ~~chairman;~~chair; selection; removal; compensation; quorum; services.**

(a) The ~~Air Quality Compliance~~Small Business Environmental Advisory Panel ~~of the Department of Environment and Natural Resources~~ shall consist of two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the general public; two members appointed one each by the Speaker and the minority leader of the House of Representatives, and who are owners, or who represent owners, of small business stationary sources; two members appointed one each by the President Pro Tempore and the minority leader of the Senate, who are owners, or who represent owners, of small business stationary sources; and one member appointed by the Secretary of Environment and Natural Resources.

(b) The Governor shall designate one member of the Panel to serve as ~~chairman~~ chair at ~~his pleasure.~~the pleasure of the Governor.

(c) Members shall serve staggered terms of four years. In order to achieve staggered terms, the Speaker and the minority leader of the House of Representatives shall initially appoint members for terms of two years, the President Pro Tempore and the minority leader of the Senate shall initially appoint members for terms of three years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Panel created by the

resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member of the Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16.

(e) The members of the Panel shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Panel shall constitute a quorum for the transaction of their business.

(g) The Secretary of Environment and Natural Resources shall designate an office within the Department of Environment and Natural Resources to serve as ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program established by the Department pursuant to section 507 of Title V of the 1990 amendments to the federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2645, 42 U.S.C. § 7661f(a)(3)). The Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall serve as the secretariat for the development and dissemination of reports and advisory opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-14(b).

(h) All clerical and other services required by the Panel shall be supplied by the Secretary of Environment and Natural Resources.

"§ **143B-319. ~~Air Quality Compliance~~Small Business Environmental Advisory Panel – meetings.**

The Panel shall meet at least semiannually and may hold special meetings at any time and place at the call of the ~~chairman~~ chair or upon the written request of at least three members."

PART IX. AMEND WELL CONTRACTOR CERTIFICATION REQUIREMENTS AND USES OF FUNDS IN THE WELL CONSTRUCTION FUND.

SECTION 9. G.S. 87-98.4 reads as rewritten:

"§ **87-98.4. Well contractor certification required; ~~applicability.~~exemptions.**

(a) Certification Required. – No ~~well contractor~~person shall ~~perform or offer to perform~~perform, manage, or supervise any well contractor activity without being certified under this Article. A person who is not a certified well contractor or who is not employed by a certified well contractor shall not offer to perform any well contractor activity unless the person utilizes a certified well contractor to perform the well contractor activity and, prior to the performance of the well contractor activity, the person discloses to the landowner in writing the name of the certified well contractor who will perform the well contractor activity, the certification number of the well contractor, and the name of the company that employs the certified well contractor. ~~The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.~~

(b) ~~Applicability.~~Exempt persons and activities. – This Article does not apply to ~~a person who meets any of the following descriptions:~~any of the following persons or activities:

(1) ~~Is~~ A person who is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) ~~Constructs,~~ A person who constructs, repairs, or abandons a well that is located on land owned or leased by that person.

(3) A person who is employed by a government agency and who performs well contractor activity solely within the scope of the person's government employment.

(4) A person who is licensed as a professional engineer under Chapter 89C of the General Statutes, a geologist under Chapter 89E of the General Statutes, or a soil scientist under Chapter 89F of the General Statutes who uses a hand auger to collect soil or water samples or to measure water levels. This exemption does not include the construction of a monitoring well.

(5) Construction, repair, or abandonment of a well used for a temporary dewatering activity that is associated with, and necessary to complete construction of, a utility distribution or collection system, a building or other structure, or a transportation system, if all of the following conditions are met:

a. The dewatering well is constructed solely for the purpose of removing water from or lowering the water table in the immediate area of the construction activity.

b. The dewatering well is located within 25 feet of the excavation and is not greater than 25 feet deeper than the excavation.

c. The dewatering well is abandoned in accordance with rules governing the abandonment of wells adopted by the Environmental Management Commission pursuant to G.S. 87-87 within 30 days of installation of the well or within 10 days of completion of the project, whichever is later.

(6) Construction, repair, or abandonment of a well used for a temporary dewatering activity that is associated with the construction of a borrow pit if the dewatering activity is located within 15 feet of the proposed perimeter of the borrow pit.

(7) Exploratory drilling for mining-related investigations.

(8) Installation of a water level observation well on property for which a mining permit has been issued under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(9) Drilling of a blast hole.

(10) Installation of a cathodic protection anode.

(11) Installation of a wetland monitoring gauge at a depth of eight feet or less for the purpose of monitoring fluctuations in the water table.

(12) Installation of a caisson, piling, or structural pier.

(c) Additional Exemptions. – In addition to the exemptions set out in subsection (b) of this section, the Commission may exempt by rule a geophysical activity, construction activity, or other well contractor activity from the requirements of this

Article if the Commission finds that the activity has a negligible impact on the environment; public health, safety, and welfare; and the groundwater resources of the State."

PART X. EFFECTIVE DATE.

SECTION 10. Section 2.1 of this act becomes effective 1 December 2005. Section 4.1 of this act becomes effective 1 January 2007. Part VII of this act becomes effective 1 January 2006. The remaining sections of this act become effective when this act becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:25 p.m. on the 13th day of September, 2005.

H.B. 1316 Session Law 2005-387

AN ACT ADOPTING THE FRASER FIR AS THE OFFICIAL CHRISTMAS TREE OF THE STATE OF NORTH CAROLINA AND THE SOUTHERN APPALACHIAN BROOK TROUT AS THE OFFICIAL FRESHWATER TROUT OF NORTH CAROLINA.

Whereas, North Carolina has 1,500 Christmas tree growers and produces more trees than any other state except Oregon; and

Whereas, North Carolina tree growers produce over 50 million Fraser firs each year; and

Whereas, the Fraser fir constitutes more than 90% of all the Christmas trees grown in North Carolina; and

Whereas, the Fraser fir is named for John Fraser, a Scottish botanist who explored the Southern Appalachian mountains of North Carolina in the late 1700s; and

Whereas, the Fraser fir is a pyramid-shaped tree that reaches a maximum height of 80 feet and a trunk diameter of one to one and one-half feet; and

Whereas, the Fraser fir grows naturally only in the Southern Appalachians; and

Whereas, Fraser fir trees grown in North Carolina have won the National Christmas Tree Association's annual tree competition more than any other species; and

Whereas, North Carolina contains innumerable mountain streams and coldwater fisheries habitats; and

Whereas, these mountain streams are home to brook trout (Salvelinus fontinalis), which is North Carolina's only native freshwater trout species; and

Whereas, the Southern Appalachian form of brook trout is a scientifically-recognized unique and genetically distinct form locally known as "specks" or "speckle" trout because of the numerous specks on its skin; and

Whereas, North Carolina is home to some 400 self-sustaining populations of Southern Appalachian brook trout, more than in any other state; and

Whereas, these wild and colorful fish are important keystones of ecological diversity, indicators of outstanding water quality, and representatives of the pure and unspoiled areas that they inhabit; and

Whereas, Southern Appalachian brook trout are cooperative sport fish, and may be caught by anglers using traditional fly-fishing equipment and locally-adapted fly patterns, thereby supporting extensive recreational fishing opportunities, economic development, and tourism; and

Whereas, by their character and contribution, these unique fish are woven into the historical and cultural fabric of Western North Carolina; and

Whereas, the Fraser fir deserves recognition as the official Christmas tree of the State of North Carolina and the Southern Appalachian brook trout deserves recognition as the official freshwater trout of the State of North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

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

"§ **145-25. State Christmas tree.**

The Fraser fir (Abies fraseri) is adopted as the official Christmas tree of the State of North Carolina."

SECTION 2. Chapter 145 of the General Statutes is amended by adding a new section to read:

"§ **145-26. State freshwater trout.**

The Southern Appalachian strain of brook trout (Salvelinus fontinalis) is adopted as the official freshwater trout of the State of North Carolina."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:25 p.m. on the 13th day of September, 2005.

H.B. 561 **Session Law 2005-388**

AN ACT RELATING TO COMMISSIONS ALLOWED TO PERSONAL REPRESENTATIVES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-23-3 reads as rewritten:

"§ **28A-23-3. Commissions allowed personal representatives; representatives guilty of misconduct or default.**

(a) Personal representatives, collectors or public administrators shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with ~~law, which~~ law. In determining the maximum commissions allowable under this subsection, the clerk of superior court may take into consideration fees paid by the estate for professional services performed in the ordinary course of administering the estate, including services performed by attorneys and accountants. However, the clerk is not required to reduce the maximum commissions allowed by the aggregate fees paid to professionals on a dollar-for-dollar basis.

The commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other

persons claiming an interest in the estate. ~~Provided, however, when~~ If the gross value of an estate is two thousand dollars ($2,000) or less, the clerk of superior court ~~is authorized and empowered to~~ may fix the commission to be received by the personal representative, collector or public administrator in an amount ~~as he,~~ the clerk of superior court, in ~~his~~ the clerk's discretion, deems just and adequate.

(b) In determining the amount of ~~such~~ the commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies.

(c) The clerk of superior court may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit fixed in this section.

(d) Nothing in this section shall be ~~construed:~~construed to:

(1) ~~To prevent~~ Prevent the clerk of the superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the ~~estate; or~~estate.

(2) ~~To allow~~ Allow commissions on distribution of the shares of heirs or on distribution of shares of ~~devisees; or~~devisees.

(3) ~~To abridge~~ Abridge the right of any party interested in the administration of a decedent's estate to appeal an order of the clerk of superior court to a judge of superior court.

(e) No personal representative, collector or public administrator, who has been guilty of ~~such~~ default or misconduct in the due execution of his or her office resulting in the revocation of his or her appointment of the personal representative, collector, or public administrator under the provisions of G.S. 28A-9-1, shall be entitled to any commission under the provisions of this section.

(f) For the purpose of computing commissions whenever any portion of the dividends, interest, rents or other amounts payable to a personal representative, collector or public administrator is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount ~~so~~ withheld shall be deemed to have been received and expended.

(g) Subsection (a) of this section does not apply if the testator's will specifies a stipulated amount or method or standard for determining the compensation for the services rendered by the personal representative, including a provision in the will that the compensation of the personal representative is to be determined by applying the personal representative's regularly adopted schedule of compensation in effect at the time of performance of those services. Subsection (a) of this section also shall not apply if the testator's will provides that the personal representative is to receive "reasonable compensation" for those services or similar language to that effect if the personal representative and the beneficiaries whose shares would be charged with the payment of the personal representative's compensation consent in writing to the specific amount that constitutes reasonable compensation.

(h) Subsection (a) of this section shall apply if the testator's will provides that compensation of the personal representative shall be the amount "as provided by law," the "maximum amount provided by law," or other similar language."

SECTION 2. G.S. 28A-19-6, as amended by S.L. 2005-180, reads as rewritten:

"§ **28A-19-6. Order of payment of claims.**

(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of two thousand five hundred dollars ($2,500). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of two thousand five hundred dollars ($2,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. All dues, taxes, and other claims with preference under the laws of the United States.

Fourth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

Sixth class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Seventh class. A claim for equitable distributions.

Eighth class. All other claims.

(b) Notwithstanding subsection (a) of this section, if payment of the commissions of the personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to pay all claims against the estate of a decedent, then the commissions shall be limited to the amount allowed under G.S. 28A-23-3(a)."

SECTION 3. This act becomes effective January 1, 2006, and applies to commissions paid on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:29 p.m. on the 13th day of September, 2005.

H.B. 1375 **Session Law 2005-389**

AN ACT AMENDING THE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO CLARIFY AND ENHANCE THOSE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.9 reads as rewritten:

"§ **50-13.9. Procedure to insure payment of child support.**

(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) apply.

(b) After entry of an order by the court under subsection (a) of this section, the State Child Support Collection and Disbursement Unit shall transmit child support payments that are made to it to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

(b1) In a IV-D case:

(1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received. In any action establishing, enforcing, or modifying a child support order, the payment records maintained by the designated child support agency shall be admissible evidence, and the court shall permit the designated representative to authenticate those records.

(b2) In a non-IV-D case:

~~(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. The State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.~~

(2) The clerk of court shall maintain all official records ~~in the case.~~and all case data concerning child support matters previously enforced by the clerk of court.

~~(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.~~

(c) ~~In a non-IV-D case, the parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order.~~ In a IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt.

(d) ~~In a non-IV-D case, when the clerk of superior court is notified by the State Child Support Collection and Disbursement Unit that an obligor has failed to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of that amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, revocation of licensing privileges, or other appropriate means. Failure to receive the delinquency notice is not a defense in any subsequent proceeding. Sending the notice of delinquency is in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.~~

~~If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided in this subsection, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge.~~ Upon affidavit of an obligee, the clerk or a district court judge may order the obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both. The ~~enforcement~~ order shall ~~order~~ require the obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to the obligor's employment, the obligor's licensing privileges, and the amount and sources of the obligor's disposable income. The ~~enforcement~~ order shall state:

(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;

(2) That the obligor is delinquent and the amount of overdue support;

(2a) That the court may order the revocation of some or all of the obligor's licensing privileges if the obligor is delinquent in an amount equal to the support due for one month;

(3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;

(4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;

(5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;

(6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The ~~enforcement~~ order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. ~~The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment.~~

On motion of the person to whom support is ~~owed,~~ owed in a non-IV-D case, with the approval of the district court judge, if the district court judge finds it is in the best interest of the child, no ~~enforcement~~ order shall be issued.

~~When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.~~

~~This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee.~~

~~(e) The clerk of court shall maintain and make available to the district court judge a list of attorneys who are willing to undertake representation, pursuant to this section, of persons to whom child support is owed. No attorney shall be placed on such list without his permission.~~

~~(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to be heard for enforcement at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:~~

~~(1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party; or~~

~~(2) The party to whom support payments are owed requests the judge not to appoint an attorney; or~~

~~(3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.~~

~~The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6.~~

(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

SECTION 2. G.S. 110-135 reads as rewritten:

"§ **110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

A past-due public assistance debt as described in this section may be deemed negotiable and subject to reduction if the public assistance debt is not less than fifteen thousand dollars ($15,000) and the responsible parent continues to be obligated to pay current child support. Upon agreement between the State and the responsible parent, and upon approval of the court upon an inquiry into the financial status of the obligor, the responsible parent shall pay all child support payments, including payments due on child support arrears, entered by a valid court order for a 24-month period of time. Upon the timely payment of each court-ordered child support obligation during the full 24-month period, including payments due on child support arrears, the State shall reduce the responsible parent's public assistance debt by two-thirds. If the responsible parent is late or defaults on any single payment during the 24-month period, no portion of the public assistance debt shall be reduced. The responsible parent may attempt to achieve 24 consecutive months of child support payments as often as possible in order to reduce his or her public assistance debt. However, once the responsible parent's public assistance debt has been reduced by two-thirds because of the successful completion of this agreement, the responsible parent shall no longer be eligible for this program. The reduction of public assistance debt as set forth in this section shall be in addition to all other remedies available to the State for the retirement of the debt. This program shall not prevent the State from taking any and all other measures available by law.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage."

SECTION 3. G.S. 49-14(a) reads as rewritten:

"(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A ~~certified~~ copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

SECTION 4. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth ~~certificate and shall be presumed to be the natural father of the child,~~certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. ~~A~~ In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

SECTION 5. G.S. 110-139.2(b1) reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a ~~delinquent~~ child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the ~~delinquency.~~amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the ~~obligor's child support obligation~~amount of unpaid support owed shall be ~~in arrears in~~ an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the ~~arrears amount~~amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the ~~obligor~~ obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. ~~The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure, except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent.~~ The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified ~~arrears amount,~~amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the ~~obligor's~~ contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The ~~lien may be contested~~obligor account holder may contest the lien only on the basis that the ~~arrearage~~ amount owed is an amount less than the amount of

support owed for six months, or is less than one thousand dollars ($1,000), whichever is less, or the ~~obligor~~ contesting party is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the ~~delinquent~~ obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this ~~State.~~State without involvement of the Department."

SECTION 6. Section 1 of this act becomes effective July 1, 2007. The remainder of the act is effective 90 days after it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:29 p.m. on the 13th day of September, 2005.

H.B. 607 **Session Law 2005-390**

AN ACT TO RENAME THE FARMLAND PRESERVATION ENABLING ACT AND FARMLAND PRESERVATION TRUST FUND AS THE AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION ENABLING ACT AND THE AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION TRUST FUND AND TO AMEND THE ACT TO ESTABLISH A CATEGORY OF ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS THAT OFFERS ADDITIONAL BENEFITS FOR FARMLAND WHEN THE OWNER OF THE FARMLAND IS WILLING TO ENTER INTO AN IRREVOCABLE CONSERVATION AGREEMENT FOR AT LEAST TEN YEARS AND TO CREATE AN AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION TRUST FUND ADVISORY COMMITTEE.

Whereas, North Carolina's 53,000 farms provide food, fiber, economic activity, wildlife habitat, natural resource protection, open spaces, cultural heritage, and fiscal savings to the citizens of the State; and

Whereas, a productive and stable agricultural sector is important to farm families, rural communities, local economies, and the State of North Carolina; and

Whereas, the Voluntary Agricultural Districts program is a popular, low-cost, locally driven option that links farmers, elected officials, county staff, and the general public in understanding and supporting the needs of agriculture; and

Whereas, landowners are looking for a wider range of options to help them develop sustainable and profitable farms and pass them along to future generations; and

Whereas, expanding the Farmland Preservation Enabling Act and authorizing counties and cities to establish a new category of agricultural district, an enhanced voluntary agricultural district, will provide counties and cities with a wider range of

options to protect farmland from nonfarm development by providing programs within their jurisdictions that promote the growth, sustainability, and profitability of farming operations; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 61 of Chapter 106 of the General Statutes reads as rewritten:

"Article 61.

Agricultural Development and Preservation of Farmland."

SECTION 2. G.S. 106-735 and G.S. 106-736 are recodified as Part 1 of Article 61 of Chapter 106 of the General Statutes, to be entitled "General Provisions".

SECTION 3. G.S. 106-737 through G.S. 106-743 are recodified as Part 2 of Article 61 of Chapter 106 of the General Statutes, to be entitled "Voluntary Agricultural Districts".

SECTION 4. G.S. 106-744 is recodified as Part 4 of Article 61 of Chapter 106 of the General Statutes, to be entitled "Agricultural Conservation Easements".

SECTION 5. Article 61 of Chapter 106 of the General Statutes is amended by adding a new Part to read:

"Part 3. Enhanced Voluntary Agricultural Districts.

"§ **106-743.1. Enhanced voluntary agricultural districts.**

(a) A county or a municipality may adopt an ordinance establishing an enhanced voluntary agricultural district. An ordinance adopted pursuant to this Part shall provide:

(1) For the establishment of an enhanced voluntary agricultural district that initially consists of at least the number of contiguous acres of agricultural land, and forestland and horticultural land that is part of a qualifying farm under G.S. 106-737 or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance.

(2) For the formation of the enhanced voluntary agricultural district upon the execution of a conservation agreement, as defined in G.S. 121-35, that meets the condition set forth in G.S. 106-743.2 by the landowners of the requisite acreage to sustain agriculture in the enhanced voluntary agricultural district.

(3) That the form of the agreement under subdivision (2) of this subsection be reviewed and approved by an agricultural advisory board established under G.S. 106-739, or other governing board of the county or city that adopted the ordinance.

(4) That each enhanced voluntary agricultural district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of establishing an enhanced voluntary agricultural district is to allow a county or a city to provide additional benefits to farmland beyond that available in a voluntary agricultural district established under Part 2 of this Article, when the owner of the farmland agrees to the condition imposed under G.S. 106-743.2. The county or city that adopted the ordinance may take any action it deems appropriate to encourage the formation of these districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in

accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction.

(d) A county or city ordinance adopted pursuant to this Part may be adopted simultaneously with the creation of a voluntary agricultural district pursuant to G.S. 106-738.

"**§ 106-743.2. Conservation agreements for farmland in enhanced voluntary agricultural districts; limitation.**

A conservation agreement entered into between a county or city and a landowner pursuant to G.S. 106-743.1(a)(2) shall be irrevocable for a period of at least 10 years from the date the agreement is executed. At the end of its term, a conservation agreement shall automatically renew for a term of three years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced voluntary agricultural district. The benefits set forth in this Part shall be available to the farmland that is the subject of the conservation agreement for the duration of the conservation agreement.

"**§ 106-743.3. Enhanced voluntary agricultural districts entitled to all benefits of voluntary agricultural districts.**

The provisions of G.S. 106-739 through G.S. 106-741 and G.S. 106-743 apply to an enhanced voluntary agricultural district under this Part, to an ordinance adopted under this Part, and to any person, entity, or farmland subject to this Part in the same manner as they apply under Part 2 of this Article.

"**§ 106-743.4. Enhanced voluntary agricultural districts; additional benefits.**

(a) Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) of its gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from zoning regulations under G.S. 153A-340(b). For purposes of G.S. 153A-340(b), the production of any nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm that is subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed twenty-five percent (25%) of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

Nothing in this section shall affect the county's authority to zone swine farms pursuant to G.S. 153A-340(b)(3).

(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. 143-215.74(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes for funds to benefit that farmland.

(c) State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to any person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect.

"**§ 106-743.5. Waiver of utility assessments.**

(a) In the ordinance establishing an enhanced voluntary agricultural district under this Part, a county or a city may provide that all assessments for utilities provided by that county or city are held in abeyance, with or without interest, for farmland subject to a conservation agreement under G.S. 106-743.2 that remains in effect until

improvements on the farmland property are connected to the utility for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.

(d) If an ordinance is adopted by a county or a city under this section, then the assessment procedures followed under Article 9 of Chapter 153A or Article 10 of Chapter 160A of the General Statutes, respectively, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S 153A-201 and G.S. 160A-237."

SECTION 6. G.S. 153A-340(b)(2) reads as rewritten:

"(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona ~~Bona~~ fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 7. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-383.2. Voluntary agricultural districts.**

A city may amend the ordinances applicable within its planning jurisdiction to provide flexibility to farming operations that are located within a city or county voluntary agricultural district or enhanced voluntary agricultural district adopted under Article 61 of Chapter 106 of the General Statutes. Amendments to applicable ordinances may include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism, and other activities incident to farming. For purposes of this section, the term "farming" shall have the same meaning as set forth in G.S. 106-581.1."

SECTION 8. G.S. 143-215.74(b)(9) reads as rewritten:

"(9) When the applicant is either (i) a limited-resource ~~farmer or~~ farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of Chapter 106 of the General Statutes.

b. Limited-resource farmer. – A farmer with direct and indirect annual gross farm sales that do not exceed one hundred thousand dollars ($100,000) and with an adjusted household income in each of the previous two years that is at or below the greater of the county median household income, as determined by the United States Department of Housing and Urban Development, or two times the national poverty level based on the federal poverty guidelines established by the United States Department of Health and Human Services and revised each April 1.

c. Materially and substantially participate.

1. In the case of an individual, for the individual, including members of the immediate family of the individual, to provide substantial day-to-day labor and management of the farm, consistent with the practices in the county in which the farm is located.

2. In the case of an entity, for all members of the entity, to participate in the operation of the farm, with some members providing management and some members providing labor and management necessary for day-to-day activities such that if the members did not provide the management and labor, the operation of the farm would be seriously impaired."

SECTION 9. G.S. 106-735, as recodified by Section 2 of this act, reads as rewritten:

"§ **106-735. Short title and purpose.**

(a) This ~~article~~ Article shall be known as "The Agricultural Development and Farmland Preservation Enabling Act."

(b) The purpose of this Article is to authorize counties and cities to undertake a series of programs to encourage the preservation of ~~farmland~~ qualifying farmland, as defined ~~herein.~~herein, and to foster the growth, development, and sustainability of family farms."

SECTION 10. G.S. 106-736, as recodified by Section 2 of this act, reads as rewritten:

"§ **106-736. Agricultural Development/Farmland preservation programs authorized.**

(a) A county or a city may by ordinance establish a farmland preservation program under this Article. The ordinance may authorize qualifying farms, as defined in G.S. 106-737, to take advantage of one or more of the benefits authorized by the remaining sections of this Article.

(b) A county or a city may develop programs to promote the growth, development, and sustainability of farming and assist farmers in developing and implementing plans that achieve these goals. For purposes of this Article, the terms "agriculture", "agricultural", and "farming" have the same meaning as set forth in G.S. 106-581.1."

SECTION 11. G.S. 106-737, as recodified by Section 3 of this act, reads as rewritten:

"§ **106-737. Qualifying farmland.**

In order for farmland to qualify for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real property that:

(1) Is participating in the farm present-use-value taxation program established by G.S. 105-277.2 through 105-277.7 or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3;

~~(2) Is certified by the Soil Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that (i) are best suited for providing food, seed, fiber, forage, timber, and oil seed crops, (ii) have good soil qualities, (iii) are favorable for all major crops common to the county where the land is located, (iv) have a favorable growing season, and (v) receive the available moisture needed to produce high yields an average of eight out of 10 years; or on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in G.S. 105-277.2(1), (2), and (3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies;~~

(3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodable land; and

(4) Is the subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least 10 years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations."

SECTION 12. G.S. 106-738, as recodified by Section 3 of this act, reads as rewritten:

"§ **106-738. Voluntary agricultural districts.**

(a) An ordinance adopted under this ~~Article~~ Part shall provide:

(1) For the establishment of voluntary agricultural districts consisting initially of at least the number of contiguous acres of ~~qualifying farmland~~ agricultural land, and forestland or horticultural land that is part of a qualifying farm, or the number of qualifying farms deemed appropriate by the ~~board of county commissioners;~~governing board of the county or city adopting the ordinance;

(2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district;

(3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official;

(4) That each such district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms. The county or city that adopted an ordinance under this Part may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction."

SECTION 13. G.S. 106-739, as recodified by Section 3 of this act, reads as rewritten:

"§ **106-739. Agricultural advisory board.**

An ordinance adopted under this Part or Part 3 of this Article shall provide for the establishment of an agricultural advisory board, organized and appointed as the county or city that adopted the ordinance shall deem appropriate. The county or city that adopted the ordinance may confer upon this advisory board authority to:

(1) Review and make recommendations concerning the establishment and modification of agricultural districts;

(2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Part or Part 3 of this Article;

(3) Hold public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;

(4) Advise the governing board of the county ~~commissioners~~ or city that adopted the ordinance on projects, programs, or issues affecting the agricultural economy or way of life within the county;

(5) Perform other related tasks or duties assigned by the governing board of the county ~~commissioners.~~or city that adopted the ordinance."

SECTION 14. G.S. 106-740, as recodified by Section 3 of this act, reads as rewritten:

"§ **106-740. Public hearings on condemnation of farmland.**

An ordinance adopted under this Part or Part 3 of this Article may provide that no State or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district under this Part or an enhanced voluntary agricultural district under Part 3 of this Article until such agency has requested the local agricultural advisory board established under G.S. 106-739 to hold a public hearing on the proposed condemnation.

(1) Following a public hearing held pursuant to this section, the board shall prepare and submit written findings and a recommendation to the decision-making body of the agency proposing acquisition.

(2) The board designated to hold the hearing shall have 30 days after receiving a request under this section to hold the public hearing and submit its findings and recommendations to the agency.

(3) The agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations."

SECTION 15. G.S. 106-742, as recodified by Section 3 of this act, reads as rewritten:

"§ **106-742. Waiver of water and sewer assessments.**

(a) A county or a city that has adopted an ordinance under this Part may provide by ordinance that its water and sewer assessments be held in abeyance, with or without interest, for farms, whether inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(d) If an ordinance is adopted under this section, then the assessment procedures followed under Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, whichever applies, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under ~~G.S. 153A-201.~~G.S. 153A-201 or G.S. 160A-237."

SECTION 16. G.S. 106-743, as recodified by Section 3 of this act, reads as rewritten:

"§ **106-743. ~~County~~ Local ordinances.**

A county or a city adopting an ordinance under this Part or Part 3 of this Article may consult with the North Carolina Commissioner of Agriculture or his staff before adoption, and shall record the ordinance with the Commissioner's office after adoption. Thereafter, the county or city shall submit to the Commissioner at least once a year, a written report including the status, progress and activities of ~~the county's~~its farmland preservation program under this Part or Part 3 of this Article."

SECTION 17. G.S. 106-744, as recodified by Section 4 of this act, reads as rewritten:

"§ **106-744. Purchase of agricultural conservation ~~easements.~~ easements; establishment of North Carolina Agricultural Development and Farmland Preservation Trust Fund.**

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by ~~G.S. 106-737 located within a voluntary agricultural district as defined by G.S. 106-738.~~ G.S. 106-737.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations; ~~and~~

(1a) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can

demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies ~~for the~~ for any of the following:

(1) The purchase of agricultural conservation easements, including transaction ~~costs, and~~costs.

(2) Public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.

(3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.

(4) The costs of administering the program under this Article, including the cost of staff and staff support.

(c1) The Commissioner shall distribute Trust Fund monies for such purchases, including transaction costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection ~~(c1)~~ (c2) of this section.

~~(c1)~~(c2) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

~~(c2)~~(c3) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection ~~(c1)~~ (c2) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.

(g) There is established the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee. The Advisory Committee shall be administratively located within the Department of Agriculture and Consumer Services and shall advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina. The Advisory Committee shall be composed of 19 members as follows:

(1) The Commissioner of Agriculture or the Commissioner's designee, who shall serve as the Chair of the Advisory Committee.

(2) The Secretary of Commerce or the Secretary's designee.

(3) The Secretary of Environment and Natural Resources or the Secretary's designee.

(4) Three practicing farmers, one appointed by the Governor, one appointed by the President Pro Tempore of the Senate, and one appointed by the Speaker of the House of Representatives.

(5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.

(6) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.

(7) The Executive Director of the North Carolina Rural Economic Development Center, Inc., or the Executive Director's designee.

(8) The Executive Director of the Conservation Trust for North Carolina or the Executive Director's designee.

(9) The Executive Director of the North Carolina Farm Transition Network or the Executive Director's designee.

(10) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.

(11) The Director of the Southeast Regional Office of the American Farmland Trust or the Director's designee.

(12) The Executive Director of the North Carolina Agribusiness Council or the Executive Director's designee.

(13) The President of the North Carolina State Grange or the President's designee.

(14) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.

(15) The President of the North Carolina Black Farmers and Agriculturalists Association or the President's designee.

(16) The President of the North Carolina Forestry Association or the President's designee.

(17) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(h) The Advisory Committee shall meet at least quarterly. The Department of Agriculture and Consumer Services shall provide the Advisory Committee with administrative and secretarial staff. Members of the Advisory Committee shall be entitled to per diem pursuant to G.S. 138-5 or G.S. 138-6, as appropriate. The Advisory Committee shall make recommendations to the Commissioner on the distribution of monies from the Trust Fund at least annually. The Commissioner shall take the recommendations of the Advisory Committee into consideration in making decisions on the distribution of monies from the Trust Fund.

(i) The Advisory Committee shall report no later than May 1 of each year to the Joint Legislative Commission on Governmental Operations and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year."

SECTION 18. G.S. 106-581.1 reads as rewritten:

"§ **106-581.1. Agriculture defined.**

For purposes of this Article, the terms ~~"agriculture" and "agricultural"~~ "agriculture", "agricultural", and "farming" ~~shall~~ refer to ~~the~~ all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental ~~plants, the~~plants.

(2) The planting and production of trees and ~~timber,~~timber.

(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, deer, elk, and other animals for individual and public use, consumption, and marketing. ~~Further, for purposes of this Article, aquaculture is considered a form of agriculture pursuant to~~

(4) Aquaculture as defined in G.S. 106-758.

(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm,

including building and structure repair, replacement, expansion, and construction incident to the farming operation.

(6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm."

SECTION 19. The first report required pursuant to G.S. 106-744(i), as enacted by Section 19 of this act, is due on or before 1 May 2006.

SECTION 20. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:30 p.m. on the 13th day of September, 2005.

S.B. 671 **Session Law 2005-391**

AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO REPEAL CHAPTER 10A OF THE GENERAL STATUTES REGARDING THE REGULATION OF NOTARIES PUBLIC, AND TO ENACT CHAPTER 10B RELATING TO NOTARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Uniform Real Property Electronic Recording Act.

"**§ 47-16.1. Short title.**

This Article may be cited as the Uniform Real Property Electronic Recording Act.

"**§ 47-16.2. Definitions.**

In this Article:

(1) "Document" means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

b. Eligible to be recorded in the land records maintained by the register of deeds.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the register of deeds in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture,

public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"§ **47-16.3. Validity of electronic documents.**

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this Article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to notarize, acknowledge, verify, witness, or administer the oath, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. Nothing in this act shall prohibit the North Carolina Board of Examiners for Engineers and Surveyors from requiring that the image of a seal accompany any plat or map that is presented electronically for recording.

"§ **47-16.4. Recording of documents.**

(a) In this section, "paper document" means a document that is received by the register of deeds in a form that is not electronic.

(b) A register of deeds:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards adopted by the Secretary of State.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the register of deeds began to record electronic documents.

(7) May accept electronically any fee or tax that the register of deeds is authorized to collect.

(8) May agree with other officials of this State or a political subdivision thereof on procedures or processes to facilitate the electronic satisfaction of conditions to recording and the electronic payment of fees and taxes.

"§ **47-16.5. Administration and standards.**

(a) Standard-Setting Agency. – The Secretary of State shall adopt standards to implement this Article upon recommendation of the Electronic Recording Council. The Secretary of State may direct the Council to revise any portion of the recommended standards the Secretary deems inadequate or inappropriate. Technological standards and specifications adopted by the Secretary of State to implement this Article are engineering standards for the purposes of G.S. 150B-2(8a)h.

(b) Electronic Recording Council Created. – The Electronic Recording Council is created in the Department of the Secretary of State to advise and assist the Secretary of State in the adoption of standards to implement this Article. The Council shall review

the functions listed in G.S. 47-16.4 and shall formulate and recommend to the Secretary standards for recording electronic documents and implementing the other functions listed in G.S. 47-16.4. The Council shall report its findings and recommendations to the Secretary of State at least once each calendar year. The Council shall advise the Secretary of State on a continuing basis of the need to adopt, amend, revise, or repeal standards. The Council may advise the Secretary of State on any other matter the Secretary refers to the Council.

(c) Council Membership, Terms, and Vacancies. – The Council shall consist of 13 members as follows:

(1) Seven members appointed by the North Carolina Association of Registers of Deeds. It is the intent of the General Assembly that the North Carolina Association of Registers of Deeds shall appoint as members a representative selection of registers of deeds from large, medium, and small counties, urban and rural counties, and the different geographic areas of this State.

(2) One member appointed by the North Carolina Bar Association.

(3) One member appointed by the North Carolina Society of Land Surveyors.

(4) One member appointed by the North Carolina Bankers Association.

(5) One member appointed by the North Carolina Land Title Association.

(6) One member appointed by the North Carolina Association of Assessing Officers.

(7) The Secretary of Cultural Resources or the Secretary's designee.

In making appointments to the Council, each appointing authority shall select appointees with the ability and commitment to fulfill the purposes of the Council.

Appointed members shall serve four-year terms, except that the initial appointments by the North Carolina Bar Association, the North Carolina Bankers Association, the North Carolina Association of Assessing Officers, and three of the initial appointments by the North Carolina Association of Registers of Deeds shall be for two years. All initial terms shall commence on the effective date of this Article. Members shall serve until their successors are appointed. An appointing authority may reappoint a member for successive terms. A vacancy on the Council shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(d) Council Meetings and Officers. – The Secretary of State shall call the first meeting of the Council. At the first meeting and biennially thereafter, the Council shall elect from its membership a chair and a vice-chair to serve two-year terms. Meetings may be called by the chair, the vice-chair, or the Secretary of State. Meetings shall be held as often as necessary, but at least once a year.

(e) Council Compensation. – None of the members of the Council shall receive compensation for serving on the Council, but Council members shall receive per diem, subsistence, and travel expenses in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

(f) Staff and Other Assistance. – As soon as practicable and as needed thereafter, the Council shall identify the information technology expertise it needs and report its needs to the Secretary of State. The Council shall also report any other expertise needed to fulfill its responsibilities. The Secretary of State shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the

Council to carry out its duties in an effective manner. The Secretary of State may appoint additional committees to advise and assist the Council in its work.

The Council shall consult with the North Carolina Local Government Information Systems Association, and may consult with any other person the Council deems appropriate, to advise and assist the Council in its work.

(g) Uniformity of Standards. – To keep the standards and practices of registers of deeds in this State in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this Article and to keep the technology used by registers of deeds in this State compatible with technology used by recording offices in other jurisdictions that enact substantially this Article, the Secretary of State and the Council shall consider all of the following in carrying out their responsibilities under this Article, so far as is consistent with its purposes, policies, and provisions:

(1) Standards and practices of other jurisdictions.

(2) The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.

(3) The views of interested persons and other governmental officials and entities.

(4) The needs of counties of varying size, population, and resources.

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

"**§ 47-16.6. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to promoting uniformity of interpretation of the Uniform Real Property Electronic Recording Act among states that enact it.

"**§ 47-16.7. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b))."

SECTION 2. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Real Property Electronic Recording Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 3. Chapter 10A of the General Statutes is repealed.

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 10B.**

"**Notaries.**

"Article 1.

"Notary Public Act.

"Part 1. General Provisions.

"**§ 10B-1. Short title.**

This act is the "Notary Public Act" and may be cited by that name.

"**§ 10B-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are the following:

(1) To promote, serve, and protect the public interests.
(2) To simplify, clarify, and modernize the law governing notaries.
(3) To prevent fraud and forgery.
(4) To foster ethical conduct among notaries.
(5) To enhance interstate recognition of notarial acts.
(6) To integrate procedures for traditional paper and electronic notarial acts.

"**§ 10B-3. Definitions.**

The following definitions apply in this Chapter:

(1) "Acknowledgment" means a notarial act in which an individual, at a single time and place:
  a. Appears in person before the notary and presents a record; and
  b. Is personally known to the notary or identified by the notary through satisfactory evidence and indicates to the notary that the signature on the record was voluntarily affixed by the individual for the purposes stated within the record.

(2) "Affirmation" means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:
  a. Appears in person before the notary;
  b. Is personally known to the notary or identified by the notary through satisfactory evidence; and
  c. Makes a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".

(3) "Attest" or "attestation" means the act of completing the written evidence of a notarial act, to wit: completion of a certificate by a notary who has performed a notarial act by witnessing a signature or administering an oath or affirmation.

(4) "Commission" means the empowerment to perform notarial acts and the written evidence of authority to perform those acts.

(5) "Credible witness" means an honest, reliable, and impartial person who is personally known to the notary and takes an oath or affirmation from the notary to confirm a signer's identity.

(6) "Department" means the North Carolina Department of the Secretary of State.

(7) "Director" means the Division Director for the North Carolina Department of the Secretary of State Notary Public Section.

(8) "Jurat" means a certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the ___ day of _____ 20__." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:
  a. That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;
  b. That the signer appeared before the notary on the date indicated;

c. That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.

(9) "Moral turpitude" means conduct contrary to expected standards of honesty, morality, or integrity.

(10) "Nickname" means a descriptive, familiar, or shortened form of a proper name.

(11) "Notarial act," "notary act," and "notarization" mean the act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under this Chapter, as authorized by G.S. 10B-20.

(12) "Notarial certificate" and "certificate" mean the portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.

(13) "Notary public" and "notary" mean a person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.

(14) "Oath" means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

a. Appears in person before a notary;

b. Is personally known to the notary or identified by the notary through satisfactory evidence; and

c. Makes a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".

(15) "Official misconduct" means either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.

(16) "Personal appearance" and "appear in person before a notary" mean an individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

(17) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(18) "Principal" means an individual whose signature is notarized; or an individual other than a credible witness, taking an oath or affirmation from the notary.

(19) "Record" means information that is inscribed on a tangible medium and called a traditional or paper record.

(20) "Regular place of work or business" means a location, office or other workspace, where an individual regularly spends all or part of the individual's work time.

(21) "Revocation" means the cancellation of the notary's commission stated in the order of revocation.

(22) "Satisfactory evidence of a signer's identity" means identification of an individual based on either of the following:

a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

b. The oath or affirmation of one credible witness unaffected by the record or transaction who is personally known to the notary and who personally knows the individual seeking to be identified.

(23) "Seal" and "stamp" mean a device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-24.

(24) "Secretary" means the North Carolina Secretary of State or the Secretary's designee.

(25) "Signature" means the act of personally signing one's name in ink by hand.

(26) "Subscribing witness" means a person who either watches another individual sign a record or takes that individual's acknowledgment of an already-signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign.

(27) "Suspension" and "restriction" means the termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.

(28) "Verification" or "proof" means a notarial act where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already-executed record.

"Part 2. Commissioning.

"§ **10B-4. Qualifications.**

(a) Except as provided in subsection (d) of this section, the Secretary shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.

(2) Reside or have a regular place of work or business in this State.

(3) Reside legally in the United States.

(4) Speak, read, and write the English language.

(5) Possess a high school diploma or equivalent.

(6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.

(7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.

(8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. Except for any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(c) The notary shall be commissioned in his or her county of residence, unless the notary is not a North Carolina resident, in which case he or she shall be commissioned in the county of his or her employment or business.

(d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:

(1) Submission of an incomplete application or an application containing material misstatement or omission of fact.

(2) The applicant's conviction or plea of admission or nolo contendere to a felony or any crime involving dishonesty or moral turpitude. In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.

(3) A finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit.

(4) The revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or nation. In no case may a commission be issued to an applicant within five years after the completion of all conditions of any disciplinary order.

(5) A finding that the applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(6) An applicant knowingly using false or misleading advertising in which the applicant as a notary represents that the applicant has powers, duties, rights, or privileges that the applicant does not possess by law.

(7) A finding by a state bar or court that the applicant has engaged in the unauthorized practice of law.

"**§ 10B-5. Application for commission.**

Every application for a notary commission shall be made on paper with original signatures, or in another form determined by the Secretary, and shall include all of the following:

(1) A statement of the applicant's personal qualifications as required by this Chapter.

(2) A certificate or signed statement by the instructor evidencing successful completion of the course of instruction as required by this Chapter.

(3) A notarized declaration of the applicant, as required by this Chapter.

(4) Any other information that the Secretary deems appropriate.

(5) The application fee required by this Chapter.

"**§ 10B-6. Statement of personal qualification.**

(a) The application for a notary commission shall include at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The applicant's date of birth.

(3) The mailing address for the applicant's residence, the street address for the applicant's residence, and the telephone number for the applicant's residence.

(4) The applicant's county of residence.

(5) The name of the applicant's employer, the street and mailing address for the applicant's employer, and telephone number for the applicant's employer.

(6) The applicant's last four digits of the applicant's social security number.

(7) The applicant's personal and business e-mail addresses.

(8) A declaration that the applicant is a citizen of the United States or proof of the applicant's legal residency in this country.

(9) A declaration that the applicant can speak, read, and writes in the English language.

(10) A complete listing of any issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license, or public office involving the applicant in this or any other state or nation.

(11) A complete listing of any criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other state or nation.

(12) A complete listing of any civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other state or nation.

(b) The information contained in an application under this section is a public record as defined in G.S 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes.

"**§ 10B-7. Course of study and examination.**

(a) Every applicant for an initial notary commission shall, within the three months preceding application, take a course of classroom instruction of not less than six hours approved by the Secretary and take a written examination approved by the Secretary. An applicant must answer at least eighty percent (80%) of the questions correctly in order to pass the exam. This subsection shall not apply to a licensed member of the North Carolina State Bar.

(b) Every applicant for recommissioning shall pass a written examination approved by and administered by or under the direction of the Secretary, unless the person is a licensed member of the North Carolina State Bar.

(c) The content of the course of instruction and the written examinations shall be notarial laws, procedures, and ethics.

(d) The Secretary may charge such fees as are reasonably necessary to pay the cost associated with developing and administering examinations permitted by this Chapter and for conducting the training of notaries and notary instructors.

"§ **10B-8. Length of term and jurisdiction.**

A person commissioned under this Chapter may perform notarial acts in any part of this State for a term of five years, unless the commission is earlier revoked or resigned. No commissions shall be effective prior to the administration of the oath of office. Any notarial acts performed before the administration of the oath of office, either the original commissioning or recommissioning, are invalid.

"§ **10B-9. Commission; oath of office.**

(a) If the Secretary grants a commission to an applicant, the Secretary shall notify the appointee and shall instruct the appointee regarding the proper procedure for taking the oath at the register of deeds office in the county of the appointee's commissioning.

(b) The appointee shall appear before the register of deeds no later than 45 days after commissioning and shall be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7.

(c) The register of deeds shall then place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public.

(d) The register of deeds shall deliver the commission to the notary following completion of the requirements of this section and shall notify the Secretary of the delivery.

(e) If the appointee does not appear before the register of deeds within 45 days of commissioning, the register of deeds must return the commission to the Secretary, and the appointee must reapply for commissioning. If the appointee reapplies within one year of the granting of the commission, the Secretary may waive the educational requirements of this Chapter.

"§ **10B-10. Recommissioning.**

(a) A commissioned notary may apply for recommissioning no earlier than 10 weeks prior to the expiration date of the notary's commission.

(b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:

(1) Submit a new application under G.S. 10B-5.

(2) Meet the requirements of G.S. 10B-4(b).

(3) Pass the written examination required under G.S. 10B-7, unless the notary is a licensed member of the North Carolina State Bar.

(c) An individual may apply for recommissioning within one year after the expiration of the individual's commission. The individual must comply with the requirement of subsection (b) of this section. The individual must also fulfill the educational requirement under G.S. 10B-7(a), unless the Secretary waives that requirement.

"§ **10B-11. Notarized declaration.**

The application for a notary public commission shall contain the following declaration to be executed by each applicant under oath:

Declaration of Applicant

I, _____ (name of applicant), solemnly swear or affirm under penalty of perjury that the information in this application is true, complete, and correct; that I understand the official duties and responsibilities of a notary public in this State, as described in the statutes; and that I will perform to the best of my ability all notarial acts in accordance with the law.

_____
(signature of applicant)

"**§ 10B-12. Application fee.**

Every applicant for a notary commission shall pay to the Secretary a nonrefundable application fee of fifty dollars ($50.00).

"**§ 10B-13. Instructor's certification.**

(a) The course of study required by G.S. 10B-4(b) shall be taught by an instructor certified under rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass an instructor certification course of not less than six hours taught by the Director or other person approved by the Secretary.
(2) Have at least one year of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Possess the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

(b) Certification to teach a course of study for notaries shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(c) The following individuals may be certified to teach a course of study for notaries public without paying the fee required by this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director and other duly authorized employees of the Secretary.

(d) Former registers of deeds and clerks of court who have been certified as notary public instructors must apply for commissioning as a notary public but are exempt from the education requirements of G.S. 10B-7 after successful completion of an examination administered by the Secretary.

(e) Assistant and deputy registers of deeds and assistant and deputy clerks of court must have a regular notary commission prior to receiving a certification or recertification as a notary public instructor.

(f) The Secretary may suspend or revoke the certification of a notary instructor for violating the provisions of this Chapter or any of the administrative rules implementing it.

"Part 3. Notarial Acts, Powers, and Limitations.

"**§ 10B-14. Powers and limitations.**

(a) A notary may perform any of the following notarial acts:

(1) Acknowledgments.
(2) Oaths and affirmations.
(3) Execute jurats.

(4) Verifications or proofs.

(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, from the notary's typed or printed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires.

(c) A notary is disqualified from performing a notarial act if any of the following apply:

(1) The principal or subscribing witness is not in the notary's presence at the time the notarial act is to be performed; however, nothing in this Chapter shall require a notary to complete the certificate in the presence of the principal or subscribing witness.

(2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.

(3) The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.

(4) The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.

(5) The notary is a signer of or is named, other than as a trustee in a deed of trust, in the document that is to be notarized.

(6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-20, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker.

(d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:

(1) The mark is affixed in the presence of the notary;

(2) The notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of undersigned notary"; and

(3) The notary notarizes the signature by performing an acknowledgment, oath or affirmation, jurat, or verification or proof.

(e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:

(1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;

(2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses;

(3) Both witnesses sign their own names to the record near the principal's signature;

(4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names and addresses of principal and witnesses)"; and

(5) The notary notarizes the signature through an acknowledgment, oath or affirmation, jurat, or verification or proof.

(f) A notarial act performed in another jurisdiction in compliance with the laws of that jurisdiction is valid to the same extent as if it had been performed by a notary commissioned under this Chapter if the notarial act is performed by a notary public of that jurisdiction or by any person authorized to perform notarial acts in that jurisdiction under the laws of that jurisdiction , the laws of this State, or federal law.

(g) Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents.

(h) The Secretary and register of deeds in the county in which a notary qualified may certify to the commission of the notary.

(i) A notary public who is not an attorney licensed to practice law in this State who advertises the person's services as a notary public in a language other than English, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in the language used for the advertisement. The notice shall be of conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(j) A notary public who is not an attorney licensed to practice law in this State is prohibited from representing or advertising that the notary public is an "immigration consultant" or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the Board of Immigration Appeals pursuant to Title 8, Part 292, section 2(a-e) of the Code of Federal Regulations (8 C.F.R. § 292.2(a-e)).

(k) A notary public who is not an attorney licensed to practice law in this State is prohibited from rendering any service that constitutes the unauthorized practice of law. A nonattorney notary shall not assist another person in drafting, completing, selecting, or understanding a record or transaction requiring a notarial act.

(l) A notary public required to comply with the provisions of subsection (g) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business.

(m) If notarial certificate wording is not provided or indicated for a record, a nonattorney notary shall not determine the type of notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law.

(n) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.

(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate. However:

(1) Notwithstanding the provisions of this section or G.S. 10B-22(b), a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;

(2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and

(3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration.

"**§ 10B-15. Notaries ex officio.**

(a) The clerks of the superior court may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Office of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary and may certify a notarial act performed in that capacity under the seal of the Secretary.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10B-20. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10B-4.

"§ **10B-16. False certificate.**

(a) A notary shall not execute a notarial certificate containing information known or believed by the notary to be false.

(b) A notary shall not execute a certificate that is not written in the English language. A notary may execute a certificate written in the English language that accompanies a record written in another language, which record may include a translation of the notarial certificate into the other language. In those instances, the notary shall execute only the English language certificate.

"§ **10B-17. Improper records.**

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph.

"§ **10B-18. Testimonials.**

A notary shall not use the official notary title or seal in a manner intended to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering. This section does not prohibit a notary public from performing a notarial act upon a record executed by another individual.

"Part 4. Fees.

"§ **10B-19. Imposition and waiver of fees.**

(a) For performing a notarial act, a notary may charge up to the maximum fee specified in this Chapter.

(b) A notary shall not discriminatorily condition the fee for a notarial act on any attribute of the principal that would constitute unlawful discrimination.

(c) Nothing in this Chapter shall compel a notary to charge a fee.

"§ **10B-20. Fees for notarial acts.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, jurats, verifications or proofs, five dollars ($5.00) per principal signature.

(2) For oaths or affirmations without a signature, five dollars ($5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for a principal's identity.

"§ **10B-21. Notice of fees.**

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for notarial acts. No part of any notarial fee schedule shall be printed in smaller than 10-point type.

"Part 5. Signature and Seal.

"§ **10B-22. Official signature.**

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

"**§ 10B-23. Official seal.**

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

"**§ 10B-24. Seal image.**

(a) Near the notary's official signature on the notarial certificate of a paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal.

(b) A notary's official seal shall include only the following elements:

(1) The notary's name exactly as commissioned;

(2) The words "Notary Public";

(3) The county of commissioning, including the word "County" or the abbreviation "Co."; and

(4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. The circular seal shall not be less than 1 1/2 inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 1/2 inches long. The perimeter of the seal shall contain a border that is visible when impressed.

(d) A notarial seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.

"Part 6. Certificate Forms.

"**§ 10B-25. Notarial certificates in general.**

(a) A notary shall not make or give a notarial certificate unless the notary has either (i) personal knowledge of the identity of the principal or, if applicable, the subscribing witness, or (ii) satisfactory evidence of a signer's identity.

(b) A notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-26, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the acknowledgment occurred;
(2) Names the principal who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
(4) Indicates that the principal who appeared in person before the notary acknowledged that the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein;
(5) States the date of the acknowledgment;
(6) Contains the signature and seal or stamp of the notary who took the acknowledgment; and
(7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-27, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the verification or proof occurred;
(2) Names the subscribing witness who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;
(4) Names the principal whose signature on the record is to be verified or proven;
(5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed record;
(6) States the date of the verification or proof;
(7) Contains the signature and seal or stamp of the notary who took the verification or proof; and
(8) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-28, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the oath or affirmation occurred;
(2) Names the principal who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
(4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the record;
(5) States the date of the oath or affirmation;
(6) Contains the signature and seal or stamp of the notary who took the oath or affirmation; and
(7) States the notary's commission expiration date.

(e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.

(f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.

(g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate (including, but not limited to, G.S. 31-11.6, Chapter 32A of the General Statutes, and G.S. 90-321). However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part.

"§ **10B-26. Notarial certificate for an acknowledgment.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: *name(s) of principal(s)*.

Date: _____ _____*Official Signature of Notary*____

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;
(2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;
(3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and
(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"**§ 10B-27. Notarial certificate for a verification or proof.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that *name of subscribing witness* personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed *name of principal* (the principal) sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: _____ _____*Official Signature of Notary* _____
Notary's printed or typed name, Notary Public
(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:
(1) That the subscribing witness appeared in person before the notary on the date indicated;
(2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already-signed record; and
(3) That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.

"**§ 10B-28. Notarial certificate for an oath or affirmation.**

(a) When properly completed by a notary, a notarial certificate in substantially either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

_____ County, North Carolina

Signed and sworn to (or affirmed) before me this day by *name of principal*.

Date: _____ _____*Official Signature of Notary* _____
Notary's printed or typed name, Notary Public
(Official Seal) My commission expires: _____

-OR-

_____ County, North Carolina

Sworn to (or affirmed) and subscribed before me this day by *name of principal*.

Date: _____ _____*Official Signature of Notary* _____
Notary's printed or typed name, Notary Public
(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal appeared in person before the notary on the date indicated;

(2) That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;

(3) That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; and

(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"Part 7. Changes in Status.

"§ **10B-29. Change of address.**

Within 45 days after the change of a notary's residence, business, or any mailing address or telephone number, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change, giving both old and new addresses or telephone numbers.

"§ **10B-30. Change of name.**

(a) Within 45 days after the legal change of a notary's name, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change. The notice shall include both the notary's former name and the notary's new name.

(b) A notary with a new name may continue to use the former name in performing notarial acts until all of the following steps have been completed:

(1) The notary receives a confirmation of Notary's Name Change from the Secretary.

(2) The notary obtains a new seal bearing the new name exactly as that name appears in the confirmation from the Secretary.

(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of the effective date of the change to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and to have the notary public record changed to reflect the new commissioned name.

(c) Upon completion of the requirements in subsection (b) of this section, the notary shall use the new name.

"**§ 10B-31. Change of county.**

(a) A notary who has moved to another county in North Carolina remains commissioned until the current commission expires, is not required to obtain a new seal, and may continue to notarize without changing his or her seal.

(b) When a notary who has moved applies to be recommissioned, if the commission is granted the, Secretary shall issue a notice of recommissioning. The commission applicant shall then do all of the following:

(1) Obtain a new seal bearing the new county exactly as in the notice of recommissioning.

(2) Appear before the register of deeds to which the commission was delivered within 45 days of recommissioning, to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new county and to have the notary public record changed to reflect the new county name.

"**10B-32. Change of both name and county.**

(a) Within 45 days after the legal change of a notary's name, and if the notary has also moved to a different county than as last commissioned, the notary shall submit to the Secretary a recommissioning application and fee pursuant to this Chapter. The notary may continue to perform notarial acts under the notary's previous name and seal until all of the following steps have been completed:

(1) The notary receives a transmittal receipt of reappointment due to name and county change from the Secretary.

(2) The notary obtains a new seal bearing the new name and county exactly as those items appear in the transmittal receipt.

(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of recommissioning to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and county and to have the notary public record changed to reflect the new name and county.

"**§ 10B-33. Resignation.**

(a) A notary who resigns the notary's commission shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice indicating the effective date of resignation.

(b) Notaries who cease to reside in or to maintain a regular place of work or business in this State, or who become permanently unable to perform their notarial duties, shall resign their commissions and shall deliver their seals to the Secretary by certified mail, return receipt requested.

"**§ 10B-34. Disposition of seal; death of notary.**

(a) When a notary commission is resigned or revoked, the notary shall deliver the notary's seal to the Secretary within 45 days of the resignation or revocation. Delivery

shall be accomplished by certified mail, return receipt requested. The Secretary shall destroy any seal received under this subsection.

(b) A notary whose commission has expired and whose previous commission or application was not revoked or denied by this State, is not required to deliver the seal to the Secretary as provided under subsection (a) of this section if the notary intends to apply to be recommissioned and is recommissioned within three months after the notary's commission expires.

(c) If a notary dies while commissioned or before fulfilling the disposition of seal requirements in this section, the notary's estate shall, as soon as is reasonably practicable and no later than the closing of the estate, notify the Secretary in writing of the notary's death and deliver the notary's seal to the Secretary for destruction.

"Part 8. Enforcement, Sanctions, and Remedies.

"**§ 10B-35. Enforcement and penalties.**

(a) The Secretary may warn, restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.

(b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:

(1) Holding one's self out to the public as a notary if the person does not have a commission.

(2) Performing a notarial act if the person's commission has expired or been suspended.

(3) Performing a notarial act before the person had taken the oath of office.

(c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

(1) Takes an acknowledgment, performs an oath, affirmation, or jurat without the principal personally appearing before the notary;

(2) Takes a verification or proof of a subscribing witness without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity;

(d) A notary shall be guilty of a Class I felony if the notary does any of the following:

(1) Takes an acknowledgment, verification, proof, or jurat, or performs an oath or affirmation if the notary knows it is false or fraudulent.

(2) Takes an acknowledgment, or jurat without the principal appearing if the notary does so with the intent to commit fraud.

(3) Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.

(e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.

(f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.

(g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement

agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.

(h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.

(i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.

(k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting.

"Part 9. Validation of Notarial Acts.

"§ **10B-36. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal and which contain any of the following errors are validated and given the same legal effect as if the errors had not occurred:

(1) The date of the expiration of the notary's commission is stated, whether correctly or erroneously.

(2) The notarial seal does not contain a readable impression of the notary's name, contains an incorrect spelling of the notary's name, or does not bear the name of the notary exactly as it appears on the commission, as required under G.S. 10B-24.

(3) The notary's signature does not comport exactly with the name on the notary commission or on the notary seal, as required by G.S. 10B-14.

(4) The notarial seal contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "NC", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) All notary acknowledgments performed before January 1, 1953, bearing a notarial seal are hereby validated.

(e) This section applies to notarial acts performed on or before February 1, 2004.

"§ **10B-37. Certain notarial acts validated.**

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998.

"Article 2.

"Electronic Notary Act.

"Part 1. General Provisions.

"§ **10B-38. Short title.**

This act is the Electronic Notary Public Act and may be cited by that name.

"**§ 10B-39. Definitions.**

The following definitions apply in this Article:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Electronic Notary Public" and "Electronic Notary" mean a notary public who has registered with the Secretary the capability of performing electronic notarial acts in conformance with this Article.

(3) "Electronic Document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic Notarial Act" and "Electronic Notarization" mean an official act by an electronic notary public that involves electronic documents.

(5) "Electronic Notary Seal" and "Electronic Seal" mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.

(6) "Electronic Signatures" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

(7) "Notary's Electronic Signature" means those forms of electronic signature which have been approved by the Secretary as authorized in G.S. 10B-49, as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

"**§ 10B-40. Scope of this Article.**

Article 1 of this Chapter applies to all acts authorized under this Article unless the provisions of Article 1 directly conflict with the provisions of this Article, in which case provisions of Article 2 shall control.

"Part 2. Registration.

"**§ 10B-41. Qualifications.**

(a) A person qualified for electronic notary registration shall meet all of the following requirements:

(1) Hold a valid commission as a notary public in the State of North Carolina.

(2) Except as otherwise provided, abide by all the provisions of Article 1 of this Chapter.

(3) Satisfy the requirements of G.S. 10B-43.

(4) Submit an electronic registration form containing no significant misstatement or omission of fact.

(b) The Secretary may deny a registration as an electronic notary as authorized in G.S. 10B-4(d).

"**§ 10B-42. Registration with the Secretary of State.**

(a) Before performing notarial acts electronically, a notary shall register the capability to notarize electronically with the Secretary.

(b) The term of registration as an electronic notary shall coincide with the term of the notary's commission under Article 1 of this Chapter.

(c) An electronic notary shall reregister the capability to notarize electronically at the same time the notary applies for recommissioning under the requirements of Article 1 of this Chapter.

(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The state and county of commissioning of the registrant.

(3) The expiration date of the registrant's notary commission.

(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.

(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.

(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7), which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule.

(e) The electronic registration form for an electronic notary shall be transmitted electronically to the Secretary and shall include any decrypting instructions, codes, keys, or software that allow the registration to be read.

(f) Within 10 business days after the change of any registration information required of an electronic notary, the notary shall electronically transmit to the Secretary a notice of the change of information signed with the notary's official electronic signature.

"§ **10B-43. Course of instruction.**

(a) Before performing electronic notarial acts, a notary shall take a course of instruction of least three hours approved by the Secretary and pass an examination of this course, which shall be in addition to the educational requirements provided in Article 1 of this Chapter.

(b) The content of the course and the basis for the examination shall be notarial laws, procedures, technology, and ethics as they pertain to electronic notarization.

"§ **10B-44. Fees for registration.**

The fee payable to the Secretary for registering or reregistering as an electronic notary is fifty dollars ($50.00), which shall be in addition to the fee required in G.S. 10B-12. All funds received by the Secretary under this section shall be deposited into the General Fund.

"Part 3. Electronic Notarial Acts, Powers, and Limitations.

"§ **10B-45. Types of electronic notarial acts.**

The following types of notarial acts may be performed electronically:

(1) Acknowledgments;

(2) Jurats;

(3) Verifications or proofs; and
(4) Oaths or affirmations.

"§ **10B-46. Prohibitions.**

An electronic notarization shall not be performed if the signer of the electronic document:

(1) Is not in the presence of the electronic notary at the time of notarization; and
(2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
(3) For any reason set forth in G.S. 10B-14.

"§ **10B-47. Notarial components of electronic document.**

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached:

(1) The notary's name, state, and county of commissioning exactly as stated on the commission issued by the Secretary;
(2) The words "Electronic Notary Public";
(3) The words "State of North Carolina";
(4) The expiration date of the commission;
(5) The notary's electronic signature; and
(6) The completed wording of one of the following notarial certificates:
a. Acknowledgment;
b. Jurat;
c. Verification or proof; or
d. Oath or affirmation.

"§ **10B-48. Maximum fees.**

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

(1) For acknowledgments, $10.00 per signature.
(2) For jurats, $10.00 per signature.
(3) For verifications or proofs, $10.00 per signature.
(4) For oaths or affirmations, $10.00 per signature.

"Part 4. Electronic Notary Records, Maintenance, and Disposition.

"§ **10B-49. Electronic signature, electronic seal.**

(a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

(b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary.

"§ **10B-50. Security measures.**

(a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.

(b) When not in use, the notary shall keep the notary's electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary, and shall not allow them to be used by any other notary or any other person.

(c) A notary shall do the following within 10 days of discovering that the notary's electronic seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) The Secretary may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.

(e) The Secretary may require an electronic notary to create and to maintain a record, journal, or entry of each electronic notarial act. The rule-making authority contained in this subsection shall become effective 18 months after the effective date of this act.

(f) The failure of an electronic notary to produce within 10 days of the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary under the provision of this Chapter until the Secretary reinstates the notary's commission.

(g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to the Secretary.

"§ **10B-51. Maintenance of electronic device.**

(a) An electronic notary shall take reasonable steps to ensure that any registered device used to create the notary's electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

(b) If the registration of the device used to create electronic signatures either expires or is changed during the electronic notary's term of office, the notary shall cease performing electronic notarizations until:

(1) A new device is duly issued or registered to the notary; and

(2) An electronically signed notice is sent to the Secretary that shall include the starting and expiration dates of any new registration term and any other new information at variance with information in the most recently executed electronic registration form.

"§ **10B-52. Disposition of records.**

(a) Upon compliance with G.S. 10B-51 and except as provided in subsection (b) of this section, when an electronic notary's commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary's duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables electronic affixation of the notary's official electronic signature.

(b) A former electronic notary whose previous commission or application was not revoked or denied by the Secretary need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature within three months after commission expiration.

"Part 5. Certificate Forms.

"§ **10B-53. Validity of notarial certificates.**

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article.

"§ **10B-54. Form of evidence of authority of electronic notarial act.**

Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States.

"§ **10B-55. Certificate of authority for electronic notarial act.**

(a) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary of this State shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, _____ (name, title, jurisdiction of commissioning official) certify that _____ (name of electronic notary), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of North Carolina and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this _____ day of _____, 20___.

(Electronic signature (and seal) of commissioning official)

(b) The Secretary may charge ten dollars ($10.00) for issuing an electronic certificate of authority.

"Part 6. Enforcement.

"§ **10B-56. Restriction or revocation of registration.**

The Secretary or the Secretary's designee shall have the authority to warn, restrict, suspend, or revoke an electronic notary registration for a violation of this Chapter and on any ground for which electronic notary registration may be denied under this Chapter.

"§ **10B-57. Wrongful manufacture, distribution, or possession of software or hardware.**

(a) Any person who knowingly creates, manufactures, or distributes software for the purpose of allowing a person to act as an electronic notary without being commissioned and registered in accordance with this act shall be guilty of a Class G felony.

(b) Any person who wrongfully obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, file, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a Class I felony."

SECTION 5. G.S. 66-271 reads as rewritten:

"§ **66-271. Definitions.**

The following definitions apply in this Article:

…

(5) Notary public. – Defined in ~~G.S. 10A-3.~~G.S. 10B-3.

…."

SECTION 6. G.S. 66-272 reads as rewritten:

"§ **66-272. Certificate of authentication.**

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in

the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication ~~may be placed on the document itself, if space is available, or by appending it~~ shall be appended to the document on a separate sheet."

SECTION 7. G.S. 66-273 reads as rewritten:

"§ **66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in ~~English or accompanied by a certified or notarized English translation.~~ English and must comply with Chapter 10B of the General Statutes.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

(5) Whenever a document is to be authenticated by the United States Department of State, it must comply with all applicable statutes, rules, and regulations of that office."

SECTION 8. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

…

(12) Notarial Acts. – For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in ~~G.S. 10A-10.~~ G.S. 10B-20 or G.S. 10B-48 for electronic notarial acts. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

….

(17) Qualification of Notary Public. – For administering the oaths of office to a notary public and making the appropriate record entries as provided in ~~G.S. 10A-8~~ G.S. 10B-9 ten dollars ($10.00).

…"

SECTION 9. Article 3 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ **47-37.1. Other forms of proof.**

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B (G.S. 10B-25 et. seq.) shall be deemed a sufficient form of

probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative capacity, the acknowledgment or proof of that individual's signature may, but is not required to:

(1) State that the individual signed the instrument in a representative capacity.

(2) State that the individual who signed the instrument in a representative capacity had due authority to do so.

(3) Identify the represented person or entity."

SECTION 10.(a) The Secretary of State may use the Department's internal information technology staff and may expend up to the sum of two hundred thousand dollars ($200,000) for the 2005-2006 fiscal year from the Department of the Secretary of State E-Commerce Transaction Fund, pursuant to G.S. 66-58.12(c), for the implementation of this act.

SECTION 10.(b) There is appropriated from the General Fund to the Department of the Secretary of State the sum of one hundred thousand dollars ($100,000) for the 2005-2006 fiscal year and the sum of one hundred thousand dollars ($100,000) for the 2006-2007 fiscal year for the administration of Article 2 of Chapter 10B of the General Statutes.

SECTION 11. As soon as practicable, or within 24 months of the effective date of this act, all North Carolina registers of deeds and clerks of superior court shall submit to the Department of the Secretary of State legible and reproducible copies of the pages contained in their "Records of Notaries Public" created prior to 1991 for archiving in permanent storage. The copies shall be reproduced pursuant to standards set by the Department to ensure the legibility of the copies and the compatibility with the Department's existing systems. The Department shall be responsible for any expense incurred relating to the shipment or transfer of these records. The original permanent records shall be returned to the Register of Deeds if submitted to the Secretary for copying.

SECTION 12. This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction, and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted.

SECTION 13. Sections 1, 2, 10, and 13 of this act are effective when they become law. The remainder of the act becomes effective December 1, 2005, and applies to notarial acts and applications for notary commissions and recommissions made on or after that date. Notary commissions issued under Chapter 10A of the General Statutes prior to December 1, 2005, shall remain valid unless otherwise revoked or suspended by the Secretary until those commissions expire as provided in Chapter 10A. G.S. 10B-35 and G.S. 10B-57 apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or Chapter 10B of the General Statutes. Notary instructor certifications issued under G.S. 10A-7 shall remain valid until the date of expiration provided for on the certificate,

and persons holding those certificates may provide instruction until their certificates expire.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 3:31 p.m. on the 13th day of September, 2005.

H.B. 1174 **Session Law 2005-392**

AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CONTROL LAWS REGARDING THE ISSUANCE AND REVOCATION OF PERMITS AT LOCATIONS THAT ARE OR BECOME UNSUITABLE TO HOLD ABC PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(12a) 'Premises' means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process."

SECTION 2. G.S. 18B-901(c) reads as rewritten:

"(c) Factors in Issuing Permit. – Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which ~~he~~ the applicant has applied. To be a suitable place, the local governing body shall return a Zoning and Compliance Form to the Commission on a form provided by the Commission to show the establishment ~~shall comply~~ is in compliance with all applicable building and fire ~~codes.~~codes and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A of the General Statutes and as required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining whether the applicant and the business location are suitable ~~are:~~are all of the following:

(1) The reputation, character, and criminal record of the ~~applicant;~~applicant.

(2) The number of places already holding ABC permits within the ~~neighborhood;~~neighborhood.

(3) Parking facilities and traffic conditions in the ~~neighborhood;~~neighborhood.

(4) Kinds of businesses already in the ~~neighborhood;~~neighborhood.

(5) Whether the establishment is located within 50 feet of a church ~~or public school or church school;~~, public school, or any nonpublic school as defined by Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.

(6) Zoning ~~laws;~~laws.

(7) The recommendations of the local governing ~~body; and~~body.

(8) Any other evidence that would tend to show whether the applicant would comply with the ABC ~~laws and whether operation of his business at that location would be detrimental to the neighborhood.~~laws.

(9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood, including evidence admissible under G.S. 150B-29(a) of any of the following:

a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.

b. Evidence of illegal drug activity on or about the licensed premises.

c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises."

SECTION 3. G.S. 18B-901(d) reads as rewritten:

"(d) Commission's Authority. – The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued."

SECTION 4. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. –

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. ~~No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).~~

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. ~~14-309(a)~~ 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

(3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's

employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred."

SECTION 5. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of G.S. 150B-2, ~~and~~ and, except for revocation pursuant to G.S. 18B-904(e)(3), a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section."

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:41 p.m. on the 13th day of September, 2005.

H.B. 1543 **Session Law 2005-393**

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"§ **130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by

the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.

(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure to persons other than the parties and attorneys to the proceeding of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 2 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor."

SECTION 4. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:43 p.m. on the 13th day of September, 2005.

H.B. 1169 **Session Law 2005-394**

AN ACT TO AUTHORIZE THE INVESTMENT OF STATE AND LOCAL FUNDS IN NORTH CAROLINA FINANCIAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.1(c)(5) reads as rewritten:

"(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

…

(5) ~~Time~~ Certificates of deposit and other time deposits of financial ~~institutions with~~ institutions under any of the following conditions:

a. With financial institutions with a physical presence in ~~North Carolina~~the State for the purpose of receiving commercial or retail deposits; provided that any principal amount of such deposit in excess of the amount insured by the federal government or any agency thereof, be fully secured by surety bonds, or be fully collateralized; provided further that the rate

of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity.

b. With financial institutions with a physical presence inside or outside the State, in accordance with all of the following conditions:

1. The funds are initially deposited through a bank or savings and loan association in the State that is an official depository and that is selected by the State Treasurer, provided that the rate of return or investment yield shall not be less than that available in the market on United States government or agency obligations of comparable maturity.
2. The selected bank or savings and loan association arranges for the deposit of the funds in certificates of deposit for the account of the State in one or more federally insured banks or savings and loan associations wherever located, provided that no State funds shall be deposited in a bank or savings and loan association that at the time holds other time deposits from the State.
3. The full amount of principal and any accrued interest of each certificate of deposit are covered by federal deposit insurance.
4. The selected bank or savings and loan association acts as custodian for the State with respect to the certificates of deposit issued for the State's account.
5. At the same time that the State funds are deposited and the certificates of deposit are issued, the selected bank or savings and loan association receives an amount of deposits from customers of other federally insured financial institutions wherever located equal to or greater than the amount of the funds invested by the State through the selected bank or savings and loan association pursuant to this sub-subdivision."

SECTION 2. G.S. 159-30 is amended by adding the following new subsection to read:

"(b1) In addition to deposits authorized by subsection (b) of this section, the finance officer may deposit any portion of idle funds in accordance with all of the following conditions:

(1) The funds are initially deposited through a bank or savings and loan association that is an official depository and that is selected by the finance officer.

(2) The selected bank or savings and loan association arranges for the deposit of funds in certificates of deposit for the account of the local government or public authority in one or more federally insured banks or savings and loan associations wherever located, provided that no funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the local government or public authority.

(3) The full amount of principal and any accrued interest of each certificate of deposit are covered by federal deposit insurance.

(4) The selected bank or savings and loan association acts as custodian for the local government or public authority with respect to the certificates of deposit issued for the local government's or public authority's account.

(5) At the same time that the local government or public authority funds are deposited and the certificates of deposit are issued, the selected bank or savings and loan association receives an amount of deposits from customers of other federally insured financial institutions wherever located equal to or greater than the amount of the funds invested by the local government or public authority through the selected bank or savings and loan association."

SECTION 3. G.S. 115D-58.6(b) reads as rewritten:

"(b) Moneys may be deposited at interest in any bank, savings and loan association or trust company in this State in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. In addition, moneys may be deposited in the form of certificates of deposit as provided for a local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b)."

SECTION 4. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:33 p.m. on the 14th day of September, 2005.

H.B. 1284 **Session Law 2005-395**

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"§ **93A-1. License required of real estate ~~brokers and real estate salespersons.~~brokers.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson,~~ broker, or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4.3, must be

supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.~~was formerly licensed by the Commission as a real estate salesperson before April 1, 2006."

SECTION 4. G.S. 93A-3 reads as rewritten:

"§ **93A-3. Commission created; compensation; organization.**

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

…

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any real estate transaction on behalf of another.

…."

SECTION 5. G.S. 93A-4 reads as rewritten:

"§ **93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker ~~or real estate salesperson~~ shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each

applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course.~~ Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least ~~60~~ 75 hours of classroom instruction in subjects determined by the Commission, ~~which shall be in addition to the course required for a real estate salesperson license,~~ or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be cancelled, and the Commission may, in its discretion, require the person whose license was cancelled to satisfy the postlicensing education program and the requirements for original licensure prescribed in this Chapter as a condition of license reinstatement, including the examination requirements and the license reinstatement fee prescribed by subsection (c) of this section.

(a2) An approved school shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker ~~or a license as real estate salesperson~~ shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with

due regard to the paramount interests of the public as to the applicant's competency. ~~A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.~~ A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

…."

SECTION 6. G.S. 93A-4A is recodified as G.S. 93A-4.1 and reads as rewritten:

"§ ~~**93A-4A.**~~**93A-4.1. Continuing education.**

(a) The Commission shall establish a program of continuing education for real estate ~~brokers and salespersons.~~brokers. An individual licensed as a real estate broker ~~or salesperson~~ is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate ~~broker or salesperson.~~broker.

(a1) ~~In addition to the requirements of subsection (a) of this section, the~~The Commission ~~may~~ may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course ~~of study, not to exceed six classroom hours every three years,~~ consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers ~~and salespersons~~ while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The curriculum of courses required.

(3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars ($125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval.

~~The Commission may also require a~~ An approved course sponsor ~~to~~ shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. ~~The fee shall not exceed five dollars ($5.00) per licensee.~~

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00)."

SECTION 7. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new sections to read:

"**§ 93A-4.2. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge.

"**§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

(a) Effective April 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective April 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than April 1,

2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years' full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by April 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

(c) An approved school or sponsor shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and March 31, 2006, shall, not later than April 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by April 1, 2009, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).

(e) A broker who was issued a broker license prior to April 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

(f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or April 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on April 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on April 1, 2006, the applicant's application shall be cancelled and the application fee refunded.

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005."

SECTION 8. G.S. 93A-5 reads as rewritten:

"§ **93A-5. Register of applicants; roster of ~~brokers and salespersons;~~brokers; financial report to Secretary of State.**

(a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.

(b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate ~~brokers and real estate salespersons,~~brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate salespersons~~ holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission."

SECTION 9. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salespersons,~~ advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker ~~or salesperson~~ in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North

Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 10. G.S. 93A-6.1(a) reads as rewritten:

"(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for ~~inspection.~~inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court."

SECTION 11. G.S. 93A-9 reads as rewritten:

"§ **93A-9. Licensing nonresidents.**

(a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has

been a resident of North Carolina for not more than 90 days may be considered by the Commission as a nonresident for the purposes of this subsection.

(b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate ~~broker or salesperson.~~broker.

(3) Complies with the laws of this State regulating real estate brokers and ~~salespersons and~~ rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars ($300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate ~~broker or salesperson,~~broker, and the resident North Carolina real estate broker ~~or salesperson~~ shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate ~~brokers or salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers ~~or salespersons~~ and persons or entities seeking licensure under this subsection."

SECTION 12. Article 1 of Chapter 93A of the General Statutes is amended by adding the following new section to read:

"§ **93A-12. Disputed monies.**

(a) A real estate broker licensed under this Chapter may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity.

(b) The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the real estate broker shall certify to the clerk of court that the persons who are claiming ownership of the disputed monies have been notified in accordance with subsection (c) of this section that the disputed monies are to

be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.

(c) Notice to the persons who are claiming ownership to the disputed monies required under subsection (b) of this section shall be provided by delivering a copy of the notice to the person or by mailing it to the person by first-class mail, postpaid, properly addressed to the person at the person's last known address.

(d) A real estate broker shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.

(e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to the State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes."

SECTION 13. G.S. 93A-16(a) reads as rewritten:

"(a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker or salesperson licensed under this Chapter.~~salesperson licensed before April 1, 2006, or by any real estate broker."

SECTION 14. G.S. 93A-17 reads as rewritten:

"§ **93A-17. Grounds for payment; notice and application to Commission.**

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate ~~broker or~~ salesperson licensed before April 1, 2006, or by any licensed real estate broker ~~under this Chapter~~ shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with

the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term "trust funds" shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesperson acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms "licensee", "broker", and "salesperson" shall include only individual persons licensed under this Chapter as brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons prior to April 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

SECTION 15. G.S. 93A-22 reads as rewritten:

"§ **93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, ~~the~~ any license ~~of~~ issued to the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

SECTION 16. G.S. 93A-32(2) reads as rewritten:

"(2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, ~~corporation~~ corporation, limited liability company, or association, and which conducts, for a profit or tuition charge, real estate ~~salesperson or~~ broker prelicensing or postlicensing courses prescribed by ~~G.S. 93A-4(a),~~G.S. 93A-4(a) or (a1), provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate school."

SECTION 17. G.S. 93A-34 reads as rewritten:

"§ **93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each school location and fifty dollars ($50.00) for each real estate ~~salesperson or~~ broker prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

(1) Name and address of the applicant and the school;
(2) Names, biographical data, and qualifications of director, administrators and instructors;
(3) Description of school facilities and equipment;
(4) Description of course(s) to be offered and instructional materials to be utilized;
(5) Information on financial resources available to equip and operate the school;
(6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
(7) Copies of bulletins, catalogues and other official publications;
(8) Copy of bond required by G.S. 93A-36;
(9) Such additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The school has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(5) The school publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains the following information:
    a. Identifying data and publication date;
    b. Name(s) of school and its full-time officials and faculty;
    c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;
    d. Detailed schedule of tuition and fees;

e. Detailed course outline of all courses offered.

(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.

(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.

(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.

(9) The school's owner(s), director, administrators and instructors are of good reputation and character.

(10) The ~~school complies~~school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding ~~safety and sanitation of facilities.~~health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 18. G.S. 93A-38(6) reads as rewritten:

"§ **93A-38. Suspension, revocation or denial of license.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

…

(6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 19. G.S. 93A-40 reads as rewritten:

"§ **93A-40. Registration required of time share projects; real estate ~~salespersons~~ license required.**

(a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of

sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

SECTION 20. G.S. 93A-41(7a) reads as rewritten:

"(7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers ~~and salespersons~~ at the time share project;".

SECTION 21. G.S. 93A-50 reads as rewritten:

"§ **93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36."

SECTION 22. G.S. 93A-52 reads as rewritten:

"§ **93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed ~~fifteen hundred dollars ($1500),~~ one thousand five hundred dollars ($1,500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify

to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

…

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

SECTION 23. G.S. 93A-54 reads as rewritten:

"§ **93A-54. Disciplinary action by Commission.**

(a) The Commission has power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars ($500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

…

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesperson,~~salespersons, advertising or otherwise;

…

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

SECTION 24. G.S. 93A-58(c) reads as rewritten:

"(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all ~~persons licensed as~~ time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons ~~licensed as brokers or salespersons~~ at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter."

SECTION 25. G.S. 115D-5(h) reads as rewritten:

"(h) Whenever a community college offers real estate continuing education courses pursuant to ~~G.S. 93A-4A,~~G.S. 93A-4.1, the courses shall be offered on a self-supporting basis."

SECTION 26. This section and G.S. 93A-4.3, as enacted in Section 7 of this act, are effective when this act becomes law. Sections 6, 12, and 25 of this act become effective October 1, 2005. The remainder of the act becomes effective April 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:35 p.m. on the 14th day of September, 2005.

S.B. 327 **Session Law 2005-396**

AN ACT TO MAKE CHANGES TO THE STATUTES REGARDING THE NORTH CAROLINA STATE BAR AND TO PROVIDE THE STATE BAR WITH EXPLICIT STATUTORY AUTHORITY TO IMPOSE FEES TO SUPPORT ITS WORK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-4.1 reads as rewritten:

"§ **84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of and in good standing in that ~~state and in good standing therein,~~state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the ~~litigation.~~ proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until ~~the~~ its final ~~determination thereof,~~ determination, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the

disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

(7) A fee in the amount of ~~one hundred dollars ($100.00) for support of the General Court of Justice to be remitted to the State Treasurer.~~ one hundred twenty-five dollars ($125.00), of which one hundred dollars ($100.00) shall be remitted to the State Treasurer for support of the General Court of Justice and twenty-five dollars ($25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

SECTION 2. G.S. 84-18.1(b) reads as rewritten:

"(b) Any district bar may from time to time by a majority vote of the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar may also charge a late fee, which shall not exceed fifteen dollars ($15.00), for the failure to pay judicial district bar dues on time. The district bar shall mail a written notice to every active member of the district bar at least 30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who is more than 12 full calendar months in arrears in the payment of any fee shall be furnished by the secretary-treasurer of the district bar to the Council. In the exercise of its powers as set forth in G.S. 84-23, the Council shall thereupon take disciplinary or other action with reference to the delinquent as it considers necessary and proper."

SECTION 3. G.S. 84-28.1(b) reads as rewritten:

"(b) The disciplinary hearing commission of the North Carolina State Bar, or any ~~committee thereof,~~ committee of the disciplinary hearing commission, ~~is authorized to~~

may hold hearings in discipline, incapacity and disability matters, ~~to~~ make findings of fact and conclusions of law after ~~such~~ these hearings, ~~and to~~ enter orders necessary to carry out the duties delegated to it by the ~~council.~~ Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled."

SECTION 4. G.S. 84-23(a) reads as rewritten:

"(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law."

SECTION 5. G.S. 84-23.1(b1) reads as rewritten:

"(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this ~~State.~~State and shall renew its registration with the State Bar annually."

SECTION 6. G.S. 84-23.1 is amended by adding a new subsection to read:

"(b2) Every plan shall pay an administrative fee to the Council for the initial registration and an annual renewal fee in amounts determined by the Council."

SECTION 7. Article 4 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-34.2. Specific statutory authority for certain fees.**

In addition to fees the Council is elsewhere authorized to charge and collect, the Council may charge and collect the following fees in amounts determined by the Council:

(1) A reinstatement fee for any attorney seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with the annual continuing legal education requirements.

(2) A registration fee and annual renewal fee for an interstate or international law firm.

(3) An attendance fee for continuing legal education programs that may include a fee to support the Chief Justice's Commission on Professionalism.

(4) A late fee for failing to file timely the continuing legal education annual report form, for failure to pay attendance fees, or failure to complete the annual continuing legal education requirements.

(5) An administrative fee for any attorney against whom discipline has been imposed."

SECTION 8. This act is effective when it becomes law and applies to fees assessed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:37 p.m. on the 14th day of September, 2005.

H.B. 1539 **Session Law 2005-397**

AN ACT TO AMEND THE UMSTEAD ACT RELATING TO ACTIVITIES OF THE UNIVERSITY OF NORTH CAROLINA AND TO CREATE A PANEL TO DETERMINE WHETHER UNIVERSITY ACTIVITIES VIOLATE THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(b)(8) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

…

(8) The University of North Carolina with regard to:

a. The University's utilities and other services ~~now operated by it.~~operated by it prior to January 1, 2005.

b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise ~~not exceeding twenty-five cents (25¢) in value~~ when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.

c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.

d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.

e. The hospital and Medical School of the University of North Carolina.

f. The Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State.

g. The Centennial Campus of North Carolina State University at Raleigh.

h. The Horace Williams Campus of the University of North Carolina at Chapel Hill.

i. A Millennial Campus of a constituent institution of The University of North Carolina.

j. The comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

k. Agreements by the North Carolina School of the Arts to the use of that school's facilities, equipment, and services of students, faculty, and staff for the creation of commercial materials and

productions that may be unrelated to educational purposes, so long as the proceeds from those agreements are used for the benefit of the educational mission of the North Carolina School of the Arts.

l. Activities that further the mission of the University as stated in G.S. 116-1.

m. Activities that serve students or employees of the University or members of the immediate families or guests of students or employees.

n. Activities that provide University-related services or market University-related merchandise to alumni of the University and members of their immediate families.

o. Activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise. If the University proposes to engage in a new type of activity under this subdivision, then the University shall provide electronic notice of the proposal to the persons who have requested to be included in the registry created pursuant to subdivision (j)(2) of this section prior to engaging in the new type of activity.

…"

SECTION 2. G.S. 66-58 is amended by adding the following new subsections to read:

"(i) The Board of Governors of The University of North Carolina shall establish a panel to determine whether The University of North Carolina is authorized pursuant to sub-subdivisions m., n., and o. of subdivision (8) of subsection (b) of this section to undertake an activity in competition with an existing or proposed nongovernmental entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions. The University of North Carolina shall be responsible for staffing and paying the expenses of the panel. The panel shall consist of nine members as follows:

(1) Two members who are familiar with the interests of the business community of the State appointed by the Governor.

(2) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.

(3) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.

(4) Three members who are not employees of The University of North Carolina appointed by the Board of Governors.

The panel may make the determination whether a proposed or ongoing activity undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this section is unauthorized competition. The panel may also make a determination whether a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8) of subsection (b) of this section is either unauthorized or unfair competition. The

University will be bound by a decision of the panel that a proposed or ongoing activity is not justified by the exceptions set out in sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section.

(j) The Board of Governors shall establish and publish procedures to be used by the panel created under subsection (i) of this section in making determinations. The procedures shall:

(1) Include that a determination may be initiated based on a request from any nongovernmental entity in the State that is in or proposes to be in the same or a similar or competing business or based on a request from the constituent institution or other university system entity engaging in or proposing to engage in the activity.

(2) Require the panel to maintain a registry of all parties that request to receive notification of the panel's proceedings. The notification may be electronic and shall be given to all parties that have requested to be notified at least seven days prior to the panel's meeting. The notice shall include the name of the constituent institution or other university system entity engaging in or proposing to engage in the activity and the nature of the activity. The panel shall provide the documents relating to any agenda item to anyone requesting them in advance of the panel's proceedings.

(3) Provide that the agendas for the panel's meetings, the minutes of the meetings, and the determinations of the panel shall be posted on The University of North Carolina Web site.

(k) The University of North Carolina and its employees may rely on a determination made by the panel created under subsection (i) of this section as to whether an activity violates this section, and a determination that an activity is authorized shall be an absolute defense in any prosecution for any activity undertaken before a contrary determination is made by a court or by an opinion of the Attorney General. The panel shall not have the power to overrule a prior determination of the Attorney General.

(l) The proceeds of any activity undertaken under sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that generated the proceeds or to further the mission of the constituent institution or other University entity engaging in the activity."

SECTION 3. G.S. 116-36.1(g) reads as rewritten:

"(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct

research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service ~~programs.~~programs;

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o."

SECTION 4. The panel established by Section 2 of this act shall report to the Joint Legislative Economic Development Oversight Committee. The panel shall report to the Committee by May 1 of each year on the number and types of determinations made during the preceding year.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:37 p.m. on the 14th day of September, 2005.

H.B. 1150 **Session Law 2005-398**

AN ACT TO AMEND THE JUVENILE CODE TO EXPEDITE OUTCOMES FOR CHILDREN AND FAMILIES INVOLVED IN WELFARE CASES AND APPEALS AND TO LIMIT THE APPOINTMENT OF GUARDIANS AD LITEM FOR PARENTS IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-507(c) reads as rewritten:

"(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing. At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian, or custodian or that parent, guardian, or custodian's counsel may give notice to preserve the parent, guardian, or custodian's right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5). Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that person sought to offer in opposition to cessation of reunification that the court refused to admit as evidence or to consider."

SECTION 2. G.S. 7B-602 reads as rewritten:

"§ **7B-602. Parent's right to counsel; guardian ad litem.**

(a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition and indicate the appointment on the juvenile summons or attached notice. At the first hearing, the court shall dismiss the provisional counsel if the respondent parent:

(1) Does not appear at the hearing;

(2) Does not qualify for court-appointed counsel;

(3) Has retained counsel; or

(4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent.

The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(b) In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent ~~in the following cases:~~

~~(1) Where it is alleged that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101 in that the parent is incapable as the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition of providing for the proper care and supervision of the juvenile; or~~

~~(2) Where the parent~~ who is under the age of 18 ~~years.~~ years and who is not married or otherwise emancipated. The appointment of a guardian ad litem under this subsection shall not affect the minor parent's entitlement to a guardian ad litem pursuant to G.S. 7B-601 in the event that the minor parent is the subject of a separate juvenile petition.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17, if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Guardians ad litem appointed under this section may engage in all of the following practices:

(1) Helping the parent to enter consent orders, if appropriate.

(2) Facilitating service of process on the parent.

(3) Assuring that necessary pleadings are filed.

(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met."

SECTION 3. G.S. 7B-807(b) reads as rewritten:

"(b) The adjudicatory order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 4. G.S. 7B-901 reads as rewritten:

"§ **7B-901. Dispositional hearing.**

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 5. G.S. 7B-905 is amended by adding a new subsection to read:

"(d) When a county department of social services having custody or placement responsibility of a juvenile intends to change the juvenile's placement, the department shall give the guardian ad litem for the juvenile notice of its intention unless precluded by emergency circumstances from doing so. Where emergency circumstances exist, the department of social services shall notify the guardian ad litem or the attorney advocate within 72 hours of the placement change, unless local rules require notification within a shorter time period."

SECTION 6. G.S. 7B-906(d) reads as rewritten:

"(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best

interests of the juvenile. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. The order must be reduced to writing, signed, and entered within 30 days of the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement."

SECTION 7. G.S. 7B-907(c) reads as rewritten:

"(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7B-507 shall apply to any order entered under this section."

SECTION 8. G.S. 7B-908(b)(1) reads as rewritten:

"(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding

solely based on receiving notice and an opportunity to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 9. G.S. 7B-909(c) reads as rewritten:

"(c) Notification of the court required under subsection (a) or (b) of this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) or (b) of this section. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 10. G.S. 7B-1001 reads as rewritten:

"§ **7B-1001. Right to appeal.**

~~Upon motion of a proper party as defined in G.S. 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:~~

~~(1) Any order finding absence of jurisdiction;~~

~~(2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;~~

~~(3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or~~

~~(4) Any order modifying custodial rights.~~

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

(1) Any order finding absence of jurisdiction.

(2) Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.

(3) Any initial order of disposition and the adjudication order upon which it is based.

(4) Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.

(5) An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:

a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:

1. A motion or petition to terminate the parent's rights is heard and granted.

2. The order terminating parental rights is appealed in a proper and timely manner.
3. The order to cease reunification is assigned as an error in the record on appeal of the termination of parental rights.

b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.

c. A party who is a custodian or guardian shall have the right to immediately appeal the order.

(6) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

(b) Except for orders covered in subdivision (a)(5) of this section, notice of appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58. Notice of appeal for orders covered in subdivision (a)(5) of this section shall be given in writing by a proper party as defined in G.S. 7B-1002.

(c) Notice of appeal shall be signed by counsel for the appealing party, if any, and shall be taken only by following direct instruction of the appealing party after the conclusion of the proceeding. In the case of an appeal by a juvenile, notice of appeal shall be signed by the guardian ad litem attorney advocate."

SECTION 11. G.S. 7B-1002 reads as rewritten:

"§ **7B-1002. Proper parties for appeal.**

~~An appeal may be taken by the guardian ad litem or juvenile, the juvenile's parent, guardian, or custodian, the State or county agency.~~ Appeal from an order permitted under G.S. 7B-1001 may be taken by:

(1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.

(2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.

(3) A county department of social services.

(4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.

(5) Any party that sought but failed to obtain termination of parental rights."

SECTION 12. G.S. 7B-1003 reads as rewritten:

"§ **7B-1003. Disposition pending appeal.**

(a) During an appeal of an order entered under this Subchapter, the trial court may enforce the order unless the trial court or an appellate court orders a stay.

(b) Pending disposition of an appeal, ~~the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, may issue unless the court orders otherwise.~~ unless directed otherwise by an appellate court or subsection (c) of this section applies, the trial court shall:

(1) Continue to exercise jurisdiction and conduct hearings under this Subchapter with the exception of Article 11 of the General Statutes; and

(2) Enter orders affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile.

(c) Pending disposition of an appeal of an order entered under Article 11 of this Chapter where the petition for termination of parental rights was not filed as a motion in a juvenile matter initiated under Article 4 of this Chapter, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if there be any, within 10 days thereafter, as to why the modifying order should be vacated or altered.

(d) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that ~~individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.~~ individual pending resolution of an appeal.

(e) The provisions of subsections ~~(b) and~~ (b), ~~(c)~~ (c), and (d) of G.S. 7B-905 shall apply to any order entered ~~under this section which~~ during an appeal that provides for the placement or continued placement of a juvenile in foster care."

SECTION 13. G.S. 7B-1004 reads as rewritten:

"§ **7B-1004. Disposition after appeal.**

~~Upon the affirmation of the~~ When an order of ~~adjudication or disposition of~~ the court is affirmed by the Court of Appeals or by the Supreme ~~Court in the event of an appeal, the court shall have authority to~~ Court, the trial court may modify or alter the original order ~~of adjudication or disposition~~ as the court finds to be in the best interests of the juvenile to reflect any ~~adjustment made by the juvenile or~~ change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered."

SECTION 14. G.S. 7B-1101 reads as rewritten:

"§ **7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. ~~The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:~~

~~(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.~~

~~(2) Where the parent is under the age of 18 years.~~

~~The fees of the guardian ad litem shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel.~~ Provided, that before exercising jurisdiction under this Article, the court shall find that it ~~would have~~ has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under ~~the provisions of G.S. 48-2-100 and~~ Chapter 48 of the General ~~Statutes generally.~~ Statutes."

SECTION 15. Article 11 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Guardians ad litem appointed under this section may engage in all of the following practices:

(1) Helping the parent to enter consent orders, if appropriate.

(2) Facilitating service of process on the parent.

(3) Assuring that necessary pleadings are filed.

(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel."

SECTION 16. G.S. 7B-1109(e) reads as rewritten:

"(e) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent. The adjudicatory order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 17. G.S. 7B-1110 reads as rewritten:

"§ **7B-1110. ~~Disposition.~~ Determination of best interests of the juvenile.**

(a) ~~Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.~~ After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. In making this determination, the court shall consider the following:

(1) The age of the juvenile.

(2) The likelihood of adoption of the juvenile.

(3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.

(4) The bond between the juvenile and the parent.

(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.

(6) Any relevant consideration.

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party."

SECTION 18. G.S. 7B-1113 is repealed.

SECTION 19. This act becomes effective October 1, 2005, and applies to petitions or actions filed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:38 p.m. on the 14th day of September, 2005.

H.B. 661 **Session Law 2005-399**

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A LIST OF INDIVIDUALS RESPONSIBLE FOR ABUSE OR SERIOUS NEGLECT OF A JUVENILE UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY AND ESTABLISHING A PROCESS FOR EXPUNCTION FROM THAT LIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"§ **7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

…

(18a) Responsible individual. – An individual identified by the director as the person who is responsible for rendering a juvenile abused or seriously neglected.

…

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. – Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions."

SECTION 2. G.S. 7B-311 reads as rewritten:

"§ **7B-311. Central ~~registry.~~registry; responsible individuals list.**

(a) The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to ~~policies~~ rules adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law.

(b) The Department shall also maintain a list of responsible individuals identified by county directors of social services as the result of investigative assessment responses. The Department may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(c) It is unlawful for any public official or public employee to knowingly and willfully release information from either the central registry or the responsible individuals list to a person who is not authorized to receive the information. It is unlawful for any person who is authorized to receive information from the central registry or the responsible individuals list to release that information to an unauthorized person. It is unlawful for any person who is not authorized to receive information from the central registry or the responsible individuals list to access or attempt to access that information. A person who commits an offense described in this subsection is guilty of a Class 3 misdemeanor.

(d) The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, including:

(1) Procedures for filing data.

(2) Procedures for notifying a responsible individual of a determination of abuse or serious neglect.

(3) Procedures for correcting and expunging information.

(4) Determining persons who are authorized to receive information from the responsible individuals list.

(5) Releasing information from the responsible individuals list to authorized requestors.

(6) Gathering statistical information.

(7) Keeping and maintaining information placed in the registry and on the responsible individuals list.

(8) A definition of 'serious neglect'."

SECTION 3. Subchapter I of Chapter 7B of the General Statutes is amended by adding a new Article to read:

"Article 3A.

"Expunction; Responsible Individuals List.

"**§ 7B-312. Notification to individual responsible for abuse or substantial neglect.**

(a) Within five working days after the completion of an investigative assessment response that results in a determination of abuse or serious neglect, the director shall notify the Department of the results of the assessment and shall give personal written notice to the responsible individual of the determination.

(b) If personal written notice is not obtained within 15 days of the determination being made, the director shall send the notice to the responsible individual by registered or certified mail, return receipt requested, and addressed to the responsible individual at the individual's last known address. Only the responsible individual may receive the notice.

(c) The notice shall include all of the following:

(1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

(2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.

(3) A statement informing the individual that the individual's name has been placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of

foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(4) A clear description of the actions the individual must take to have his or her name removed from the responsible individuals list. The description shall include information regarding how to request an expunction by the director of the individual's name from the responsible individuals list and procedures for seeking review by the district attorney and for seeking judicial review of the director's decision not to remove the individual's name from the list.

"§ **7B-313. Requests for expunction; director review.**

(a) An individual who has been identified as a responsible individual as the result of an investigative assessment response may, within 30 days after receipt of the notice under G.S. 7B-312(c), request that the director who determined the abuse or serious neglect and identified the individual as a responsible individual expunge the individual's name from the responsible individuals list. A request for expunction under this subsection shall be in writing, addressed to the director who determined the abuse or serious neglect and identified the individual as a responsible individual, and delivered in person or by certified mail, return receipt requested, within 30 days after receipt of notice.

(b) Upon receipt of a timely request for expunction under subsection (a) of this section, the director shall review all records, reports, and other information gathered during the investigative assessment response. The purpose of the review is to determine whether there is substantial evidence to support the determination and the placement of the individual's name on the responsible individuals list. Within 15 working days of receipt of the request for expunction, the director shall proceed as follows:

(1) If the director decides that there is not substantial evidence in the records, reports, and other information gathered during the investigative assessment response to support a determination of abuse or serious neglect and to support the identification of the individual as a responsible individual, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list. The director shall also prepare a written statement of the director's decision and send the statement to the individual seeking expunction, by personal delivery or first-class mail.

(2) If the director decides that there is substantial evidence in the records, reports, and other information gathered during the investigative assessment response to support a determination of abuse or serious neglect and to support the identification of the individual as a responsible individual, the director may uphold or modify the director's prior decision accordingly and refuse the request for an expunction. The director shall prepare a written statement of the director's decision including the reasons for the decision. The statement shall clearly indicate that it is a final decision and include information regarding the amount of time the individual has to request a review by the district attorney or to file a petition for expunction with the district court. The director shall send the statement to the individual seeking expunction by personal delivery or first-class mail. The director shall also include a second notice containing the

information required by G.S. 7B-312(c) and a copy of a petition for expunction form.

(c) If the director does not provide a written response to a request for expunction within 15 working days after its receipt, the failure shall be considered a refusal to expunge the individual's name, and the individual may request a review of the decision by the district attorney or file a petition for expunction with the district court.

(d) If the director modifies the prior determination, the director shall notify the Department of Health and Human Services, which shall change its records upon receipt of the notification.

(e) An individual whose request for expunction has been refused by a director under this section may, within 30 days after receipt of the notice of refusal, request a review of the director's decision by the district attorney under G.S. 7B-314 or file a petition requesting expunction with the district court under G.S. 7B-315.

"§ **7B-314. District attorney review expunction request.**

(a) Within 30 days of the receipt of notice of the director's refusal to expunge the individual's name under G.S. 7B-313(b) or (c), the individual may request a review of the director's decision by the district attorney of the prosecutorial district in which the abuse or serious neglect report arose. The district attorney may delegate the review of the director's decision to a designee within the district attorney's office. The individual shall request a review under this section by submitting a letter directed to the attention of the district attorney. The letter shall contain the name, date of birth, address of the individual seeking expunction, and the name of the juvenile who was the subject of the determination of abuse or serious neglect. Failure to make a timely request to the district attorney to review the director's decision shall constitute a waiver of the individual's right of review by the district attorney, but shall not bar the individual from filing a petition for expunction under G.S. 7B-315.

(b) The director shall provide the district attorney all the information the director used in making the determination. The district attorney shall review the director's decision to refuse to expunge the individual's name from the responsible individuals list, and within 30 days' receipt of the request to review, make a determination of agreement or disagreement with the director's decision.

(c) If the district attorney determines that there is not substantial evidence to support a determination of abuse or serious neglect and to support the identification of an individual as a responsible individual, the district attorney shall notify the individual and the director in writing. The director shall notify the Department of Health and Human Services within five working days of the district attorney's determination, and the Department shall change its records upon receipt of the notification.

(d) If the district attorney determines that there is substantial evidence to support a determination of abuse or serious neglect and to support the identification of an individual as a responsible individual, the district attorney shall notify the director, and the individual in writing.

"§ **7B-315. Petition for expunction; district court.**

(a) Within 30 days of the receipt of notice of the director's decision under G.S. 7B-313(b) or (c), or within 30 days from the date of a determination by the district attorney under G.S. 7B-314, whichever is later, an individual may file a petition for expunction with the district court of the county in which the abuse or serious neglect report arose. The request shall be by a petition for expunction filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director. The petition for expunction shall contain the name, date of

birth, and address of the individual seeking expunction, the name of the juvenile who was the subject of the determination of abuse or serious neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for expunction constitutes a waiver of the individual's right to file a petition for expunction and to a district court hearing.

(b) The clerk of court shall maintain a separate docket for expunction actions and upon receipt of a filed petition for expunction shall calendar the matter for hearing at a session of district court hearing juvenile matters and send notice of the hearing to the petitioner and to the director. Upon the request of a party, the court shall close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the correctness of the director's decision determining abuse or serious neglect and identifying the individual seeking expunction as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court shall have discretion to permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

(c) At the hearing, the following rights of the parties shall be preserved:

(1) The right to present sworn evidence, law, or rules that bear upon the case.

(2) The right to represent themselves or obtain the services of an attorney at their own expense.

(3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(d) Within 30 days after completion of the hearing, the court shall enter a signed, written order containing findings of fact and conclusions of law. A copy of the order shall be served on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence the correctness of the determination of abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director's decision and order the director to notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list. If the court concludes that sufficient evidence has not been presented to support a determination of abuse, but there is sufficient evidence to support a determination of serious neglect and the identification of the individual seeking expunction as a responsible individual, the court shall modify the director's decision and order the director to notify the Department of Health and Human Services to change the entry on the responsible individuals list to that of neglect.

(e) Notwithstanding any time limitations contained in this section or the provisions of G.S. 7B-316(a)(3) or (4), a district court may review a determination of abuse or serious neglect at any time if the review serves the interests of justice or for extraordinary circumstances.

(f) A party may appeal the district court's decision under G.S. 7A-27(c).

"**§ 7B-316. Persons ineligible to request expunction; stay of expunction proceeding pending juvenile court case.**

(a) Any individual who has been identified as a responsible individual in an abuse or serious neglect case is not entitled to challenge the placement of the individual's name on the responsible individuals list if any of the following apply:

(1) The individual is criminally convicted as a result of the same incident. The district attorney shall inform the director of the result of the criminal proceeding, and the director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.

(2) The individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same incident. The director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.

(3) That individual fails to make a timely request for expunction with the director who made the determination of abuse or serious neglect and identified the individual as a responsible individual.

(4) That individual fails to file a petition for expunction with the district court in a timely manner.

(5) That individual fails to keep the county department of social services informed of the individual's current address during any request for expunction so that the individual may receive notification of the director's decisions.

(b) If, prior to or during any proceeding provided for in this section, an individual seeking expunction is named as a respondent in a juvenile court case resulting from the same incident, the director, the district attorney, the district court judge, or the Court of Appeals shall stay any further proceedings for the expunction of that individual's name from the responsible individuals list until the juvenile court case is concluded or dismissed. If a juvenile court case resulting from the same determination of abuse or serious neglect is dismissed, or concludes without an adjudication of abuse or neglect, or with an adjudication that differs from the prior determination, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list or modify the prior decision of the director accordingly."

SECTION 4. G.S. 7B-200(a) reads as rewritten:

"§ **7B-200. Jurisdiction.**

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

(1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this ~~Chapter;~~Chapter.

(2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when the juvenile's parent, guardian, custodian, or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be ~~rendered;~~rendered.

(3) Proceedings to determine whether a juvenile should be ~~emancipated;~~emancipated.

(4) Proceedings to terminate parental ~~rights;~~rights.

(5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social ~~services;~~services.

(6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by ~~G.S. 7B-302;~~G.S. 7B-302.

(7) Proceedings involving consent for an abortion on an unemancipated minor ~~pursuant to~~ under Article 1A, Part 2 of Chapter 90 of the General ~~Statutes; and~~Statutes.

(8) Proceedings by an underage party seeking judicial authorization to ~~marry, pursuant to~~ marry under Article 1 of Chapter 51 of the General Statutes.

(9) Petitions for expunction of an individual's name from the responsible individuals list under Article 3A of this Chapter."

SECTION 5. This act becomes effective October 1, 2005, and applies to investigative assessment responses initiated by county departments of social services on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:41 p.m. on the 14th day of September, 2005.

S.B. 319 **Session Law 2005-400**

AN ACT ESTABLISHING THE NORTH CAROLINA SELF-INSURANCE SECURITY SYSTEM AND CLARIFYING THE PROCEDURES BY WHICH SUBSIDIARY AND AFFILIATE COMPANIES MAY BE LICENSED AS SELF-INSURERS FOR WORKERS COMPENSATION AND TO MAKE OTHER CONFORMING AND TECHNICAL CHANGES TO THE WORKERS COMPENSATION LAWS RESPECTING INDIVIDUAL SELF-INSURERS IN ARTICLE 5 OF CHAPTER 97 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.1. The title of Article 4 of Chapter 97 reads as rewritten:

"Article 4.

North Carolina Self-Insurance ~~Guaranty~~ Security Association."

SECTION 1.2. G.S. 97-130 reads as rewritten:

"§ **97-130. Definitions.**

As used in this Article:

(1) "Association" means the North Carolina Self-Insurance ~~Guaranty~~ Security Association established by G.S. 97-131.

(1a) "Association Aggregate Security System" means the security system established by the Association under G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.

(2) "Board" means the Board of Directors of the Association established by G.S. 97-132.

(3) "Commissioner" means the North Carolina Commissioner of Insurance.

(4) "Covered claim" means an unpaid claim against an insolvent individual self-insurer or group self-insurer that relates to an injury that occurs while the individual self-insurer or group self-insurer is a member of the Association and that is compensable under this Chapter.

(5) "Fund" means the North Carolina Self-Insurance ~~Guaranty~~ Security Fund established by G.S. 97-133.

(5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.

(5b) "Individual self-insurer" means an individual employer licensed by the Commissioner under Article 5 of this Chapter.

(6) "Member self-insurer" or "member" means ~~a self-insurer which is authorized by the Commissioner to self-insure pursuant to G.S. 97-93 and G.S. 97-94.~~an individual self-insurer or group self-insurer that is required to be a member of the Association under this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.

(7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

~~(8) "Self-insurer" means either: (i) an individual employer who has demonstrated under G.S. 97-93 the financial ability to directly pay compensation in the amounts and manner and when due as provided in this Chapter or (ii) a group of two or more employers who have agreed to pool their liabilities under this Chapter pursuant to G.S. 97-93.~~

(9) "Servicing facility" means those persons delegated by the Board and approved by the Commissioner to settle or compromise claims and to expend Fund assets to pay claims."

SECTION 2. G.S. 97-131 reads as rewritten:

"§ **97-131. Creation.**

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance ~~Guaranty~~ Security Association. The Association is to provide mechanisms for the payment of covered claims ~~under self-insurance coverage,~~ against member self-insurers, to avoid excessive delay in ~~payment,~~ payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, ~~and to assist, when called upon to do so by the Commissioner,~~ to assist the Commissioner in the detection of self-insurer ~~insolvencies.~~insolvencies, to fund the Association Aggregate Security System, and to capitalize the Fund to ensure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual self-insurers and group self-insurers shall be and remain members of the Association as a condition of ~~authority~~ being licensed to self-insure in this ~~State under G.S. 97-93.~~ State. The Association shall perform its functions under a Plan of Operation established or amended, or both, by the Board and approved by the Commissioner, and shall exercise its powers through the Board.

(1) ~~A~~ An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of another ~~self-insurer's~~member's insolvency, as defined in G.S. 97-135, when:

a. The individual self-insurer or group self-insurer is a member of the Association when an insolvency occurs, or

b. The individual self-insurer or group self-insurer has been a member of the Association at some point in time during the

12-month period immediately preceding the insolvency in question.

(2) ~~A~~ An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.

(3) In determining the membership of the Association ~~pursuant to~~ for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no ~~employer~~ individual self-insurer or group ~~of employers claiming self-insurer status~~self-insurer may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer ~~or~~ is on that date licensed as an individual self-insurer by the Commissioner under Article 5 of this Chapter or a group of employers is at that time ~~authorized~~ licensed as a group self-insurer by the Commissioner ~~pursuant to G.S. 97-93 and G.S. 97-94.~~under Article 47 of Chapter 58 of the General Statutes."

SECTION 3. G.S. 97-132 reads as rewritten:

"§ **97-132. Board of directors.**

The Board shall consist of not less than nine ~~persons~~ directors serving terms as established in the Plan. The ~~members of the Board~~ directors shall be selected by the ~~member self-insurers,~~ members of the Association, subject to the approval of the Commissioner, and shall serve for ~~terms which shall not exceed three years. If no members of the Board are selected within 60 days after the effective date of this Article, the Commissioner may appoint the initial members of the Board.~~ three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a director may serve. In approving selections to the Board, the Commissioner shall consider, among other things, whether ~~all member~~ individual self-insurers and group self-insurers are fairly represented. ~~Members of the Board~~ Directors may be reimbursed from the assets of the Association for expenses incurred by them as ~~members of the Board.~~directors."

SECTION 4. G.S. 97-133 reads as rewritten:

"§ **97-133. Powers and duties of the Association.**

(a) The Association shall:

(1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

(1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assets of the North Carolina Self-Insurance Guaranty Fund previously established under subdivision (2) of this subsection, the assessments required by subdivisions (2a) and (3a) of this subsection and any other sums received by the Association. In its discretion, the Board may determine that the assets of the Fund should be segregated or that a separate accounting shall be made in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board segregates the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund that represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion

of the Fund that represents assessments against group self-insurers. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets pursuant to an investment policy adopted by the Board and reviewed and approved annually by the Department of the State Treasurer. The earnings from investment of Fund assets shall be placed in or credited to the Fund.

~~(2) Assess each member of the Association as follows:~~

~~a. Each individual member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual gross premiums for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual gross premiums. Each group member self-insurer shall be annually assessed an amount equal to two percent (2%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than May 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this two percent (2%) assessment. For the purpose of making the assessments authorized by this subsection and subsections (c) and (d) of this section, the Secretary of Revenue shall provide to the Association the self-insurer premium and payroll information as determined under G.S. 105-228.5(b), (b1) and (c), and the Commissioner shall provide to the Association the group self-insurer premium information reported to the Commissioner under G.S. 58-47-75 and G.S. 58-2-165.~~

~~b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~c. If a self-insurer is a member of the Association for less than a full calendar year, the annual gross premiums shall be adjusted by that portion of the year the self-insurer is not a member of the Association.~~

~~d. If application of the contribution rates referenced in sub-subdivision a. of this subdivision would produce an amount in excess of the five million dollar ($5,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board,~~

~~regardless of the size of the fund at the time the member joins the Association.~~

(2a) Establish, operate, and maintain the Association Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as follows:

a. The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees owned or entered into by the Association and acceptable to the Commissioner. The written plan shall include, but not be limited to, (i) a description of the institutions that will issue or guarantee the securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees, including, but not limited to, the credit rating, financial strength, and AM best rating, if applicable to the institutions (ii) applicable cash flow information and financial assumptions (iii) a description of the methodology to be used by the Association to assess and collect the Association Aggregate Security System assessments to be made pursuant to subdivision (3a) of this subsection and (iv) a proposed timetable for the release of existing individual company deposits posted pursuant to G.S. 97-185(c), provided, however, that no individual company deposits posted pursuant to G.S. 97-185(c) shall be released without the written consent of the Commissioner. The noncash elements of the composite security may be one-year or multiple-year instruments.

b. Within 90 days following the submission of the initial plan under sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the initial plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the initial plan within 90 days following submission, then the initial plan shall be deemed to be approved by the Commissioner. All subsequent plans shall be either approved or disapproved within 60 days following submission.

c. The Commissioner shall also determine the total undiscounted claims liability of each individual self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the individual self-insurers that are to participate in the Association Aggregate Security System and shall notify the Association of this determination.

d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the individual self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.

e. If the Commissioner disapproves the plan for any year, every self-insurer shall deposit with the Commissioner, or continue to

deposit, the amount required by G.S. 97-185(b3) in the manner prescribed by G.S. 97-185(c).

f. Group self-insurers shall not participate in the Association Aggregate Security System.

~~(3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches five million dollars ($5,000,000), no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of five million dollars ($5,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.~~

~~The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;~~

(3a) Assess members of the Association as follows:

a. Association Aggregate Security System assessments. – The Association shall assess each individual self-insurer participating in the Association Aggregate Security System a security system assessment. The amount of the security system

assessment charged to each individual self-insurer participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:

1. The total amount of assessments necessary to provide aggregate security for all participating individual self-insurers.
2. The individual self-insurer's total workers' compensation liabilities under the Act.
3. The financial strength and creditworthiness of the participating individual self-insurer.
4. Any other relevant factors.

b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.

c. Initial assessments. – An individual self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board. A group self-insurer, upon receiving its initial license from the Commissioner, shall pay an initial assessment to the Association in an amount determined by the Board.

d. Each member shall be notified of assessments no later than 30 days before the assessment is due.

e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.

(4) Be obligated to ~~the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by the self-insurer of workers' compensation insurance as otherwise required under this Chapter.~~pay covered claims.

(5) After paying any ~~claim resulting from a self-insurer's insolvency,~~ covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and ~~dependents;~~dependents.

(6) ~~Assess the Fund in an amount necessary to pay only:~~Expend Fund assets in amounts necessary to pay all of the following:

a. The obligations ~~for~~ of the Association under this Article subsequent to an ~~insolvency;~~insolvency.

b. The expenses of handling covered claims subsequent to an ~~insolvency;~~insolvency.

c. The cost of examinations under ~~G.S. 97-137; and~~G.S. 97-137.

d. The costs of implementing and operating the Association Aggregate Security System.

e. ~~Other~~ All other expenses authorized by this ~~Article;~~Article.

(7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent ~~self-insurer~~member was a party to determine the extent to which such settlements may be properly ~~contested;~~contested.

(8) Notify such persons as the Commissioner directs under ~~G.S. 97-136;~~G.S. 97-136.

(9) Handle claims through its ~~employees~~ directors, its employees, or through one or more ~~self-insurers~~members or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but designation of a member ~~self-insurer~~ as a servicing facility may be declined by such ~~self-insurer;~~member.

(10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the ~~Association;~~Association.

(11) Pay ~~the~~ any other expenses of the Association authorized by this ~~section; and~~section.

~~(12) Establish in the Plan a mechanism to calculate the assessments required by subdivisions (2) and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

(b) The Association may:

(1) Employ or retain such ~~persons~~ persons, including, but not limited to, adjustors, brokers, accountants, attorneys, financial advisors, investment bankers, placement agents, and consultants, as the Board may determine are necessary to handle ~~claims~~ claims, ~~and~~ perform other duties ~~of~~ of, provide services to, and consult with the ~~Association;~~Association.

(2) Borrow funds necessary to effect the purposes of this Article in accord with the ~~Plan;~~Plan, including entering into standby lines of credit.

(3) Sue or be ~~sued;~~sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this ~~section; and~~section.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.

(6) Reimburse the Department of Insurance up to twenty thousand dollars ($20,000) for consultants retained by the Department to review the initial plan submitted pursuant to G.S. 97-133(a)(2a).

~~(c) In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional assessment upon its members, which shall be known as a post-insolvency assessment which shall be imposed as follows:~~

~~(1) Each individual member self-insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual gross~~

~~premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer during the prior calendar year. The assessments of each individual member self-insurer shall be in the proportion that the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the individual member self-insurer for the premium calendar year bears to the annual gross premiums of all individual member self-insurers for the preceding calendar year. For group member self-insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self-insurer during the prior calendar year. The assessments of each group member self-insurer shall be in the proportion that the annual gross premiums of the group member self-insurer for the premium calendar year bears to the annual gross premiums of all group member self-insurers for the preceding calendar year.~~

~~(2) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.~~

~~(3) The Association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.~~

~~(4) Delinquent assessments, except as provided in subdivision (3) of this subsection, shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Richmond, Virginia, on the due date of the assessment, plus four percent (4%) annually, computed from the due date of the assessment.~~

~~(5) The Association shall establish in the Plan a mechanism to calculate the assessments required by subdivision (1) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~

(c1) The Association shall provide in its Plan that the functions of administration and adjusting claims shall not be performed by the same entity that provides legal representation to the Association for claims.

~~(d) No individual member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that individual member self-insurer during the prior calendar year. No group member self-insurer may be assessed in any calendar year an amount greater than two and one-half percent (2.5%) of the annual gross premiums of that group member self-insurer during the prior calendar year. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. There shall be established in the Plan a mechanism to calculate the assessments required by this section by a simple and equitable means to convert from policy or fund years that are different from a calendar year.~~"

SECTION 5. G.S. 97-134 reads as rewritten:

"§ **97-134. Plan of Operation.**

The Plan is as follows:

(1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments become effective upon approval in writing by the Commissioner. If the Association at any time fails to submit a suitable Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. ~~Such~~ The rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.

(2) All member self-insurers shall comply with the Plan.

(3) The Plan shall:

a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be ~~performed;~~performed.

b. Establish procedures for ~~handling assets of the Association;~~investing and managing Fund assets.

c. Adopt a reasonable mechanism and procedure to achieve equity in assessing ~~the funds required in G.S. 97-133. Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors;~~members under G.S. 97-133.

d. Establish the amount and method of reimbursing members of the Board under ~~G.S. 97-132;~~G.S. 97-132.

e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. ~~A list of such claims shall be periodically submitted to the Association;~~

f. Establish regular places and times for meetings of the ~~Board;~~Board.

g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the ~~Board;~~Board.

h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or ~~decision;~~decision.

i. Establish the procedures whereby selections for the Board shall be submitted to the ~~Commissioner; and~~Commissioner.

j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association."

SECTION 6.1. G.S. 97-135 reads as rewritten:

"§ **97-135. Insolvency.**

A member self-insurer shall be insolvent for the purposes of this Article under any of the following circumstances:

(1) Determination of insolvency by a court of competent ~~jurisdiction; or~~jurisdiction.

(2) Institution of bankruptcy proceedings by or regarding the member ~~self-insurer; or~~self-insurer.

(3) The Board determines that the member self-insurer's total liabilities exceed its total assets or the member self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business.

(4) A member self-insurer is deemed to be insolvent, bankrupt, or in default as defined by the terms of any security instrument created pursuant to the Association Aggregate Security System."

SECTION 6.2. G.S. 97-136 reads as rewritten:

"§ **97-136. Powers and duties of the Commissioner.**

(a) The Commissioner ~~shall notify~~ shall:

(1) Notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.

(2) Approve or disapprove the plan for an Association Aggregate Security System as required under G.S. 97-133(a)(2a)b. and notify the Association of the information required under G.S. 97-133(a)(2a)c.

(b) The Commissioner may:

(1) Require that the Association notify the insureds of the insolvent member self-insurer and any other interested parties of the insolvency and of their rights under this Article. ~~Such~~ The notifications shall be by mail at their last known addresses, where available; but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient; and

(2) Revoke the designation of any servicing facility if ~~he~~ the Commissioner finds claims are being handled unsatisfactorily."

SECTION 7. G.S. 97-140 reads as rewritten:

"§ **97-140. Nonduplication of recovery.**

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent."

SECTION 8. G.S. 97-143 reads as rewritten:

"§ **97-143. Use of deposits made by insolvent member self-insurers.**

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend ~~the~~ any deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. For insolvent individual member self-insurers that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

SECTION 9. G.S. 97-165 reads as rewritten:

"§ **97-165. Definitions.**

As used in this Article:

(1) 'Act' means the Workers' Compensation Act established in Article 1 of this Chapter.

(1a) 'Affiliate of' or 'person affiliated with' a specific person means a person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.

(1b) 'Association Aggregate Security System' means the security system established pursuant to G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association.

(2) 'Certified audit' means an audit on which a certified public accountant expresses his or her professional opinion that the accompanying statements fairly present the financial position of the ~~self-insurer,~~ self-insurer or the guarantor, in conformity with ~~generally accepted accounting principles.~~accounting principles generally accepted in the United States.

(3) 'Certified public accountant' or 'CPA' means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the GAAP financial statement and require the ~~individual~~ self-insurer or the guarantor to replace the CPA with another whose relationship with the ~~individual~~ self-insurer or the guarantor is independent within the meaning of this definition.

(4) 'Commissioner' means the Commissioner of Insurance.

(4a) 'Control', 'controlling', 'controlled by', and 'under common control with' mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person through ownership of or through proxies for voting of greater than fifty percent (50%) of the voting securities, or in the case of a not-for-profit entity, the power to direct or cause the direction of the management and policies of the entity.

(5) 'Corporate surety' means an insurance company authorized by the Commissioner to write surety business in this State.

(6) 'GAAP financial statement' means a financial statement as defined by ~~generally accepted~~ accounting ~~principles.~~principles generally accepted in the United States.

(6a) 'Guarantor' means a person within the same holding company system who controls the applicant, whose financial statement is used by the applicant to become a self-insurer under the Act, and who has guaranteed the payment of the self-insurer's liability under the Act.

(7) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a self-insurer or guarantor is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet its obligations with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business.

(7a) 'Holding company system' means an entity comprising two or more affiliated persons.

(8) 'Management' means those persons who are authorized to direct or control the operations of a self-insurer.

(8a) 'Person' means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.

(9) 'Qualified actuary' means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, and is in compliance with G.S. 58-2-171.

(10) 'Self-insurer' means an ~~employer who retains liability under the Act and is licensed under this Article.~~ individual self-insurer as defined by G.S. 97-130(5b).

(11) 'Subsidiary of' a specific person means an affiliate controlled by such person indirectly through one or more intermediaries or an affiliate directly controlled by such person."

SECTION 10. G.S. 97-170 reads as rewritten:

"§ **97-170. License applications; required information.**

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information. A copy of the application must also be filed with the North Carolina Self-Insurance Security Association at least 90 days before the proposed licensing date.

(c) Only an applicant whose total fixed assets amount to five hundred thousand dollars ($500,000) or more may apply for a license. In judging the applicant's financial strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider all of the following relative to the ~~applicant's:~~applicant:

(1) Organizational structure and ~~management;~~management.

(2) Financial ~~strength;~~strength.

(3) Source and reliability of financial ~~information;~~information.

(4) Risks to be ~~retained;~~retained.

(5) Workers' compensation loss ~~history;~~history.

(6) Number of ~~employees;~~employees.

(7) Claims ~~administration;~~administration.
(8) Excess ~~insurance; and~~insurance.
(9) Access to excess insurance.

(d) The license application shall ~~comprise~~ be comprised of the following information:

(1) ~~Company name,~~ Applicant name; organizational ~~structure,~~ structure of the applicant, including any controlling entity, subsidiaries, or affiliates; location of principal ~~office,~~ office; contact ~~person,~~ person; organization ~~date,~~ date; type of operations within this ~~State,~~ State; management ~~background,~~ background; and addresses of all plants or offices in this State.
(2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement ~~formulation~~ presentation shall facilitate application of ratio and trend analysis.

…

(6) Summary of workers' compensation benefits paid for the last three calendar ~~years, as well as~~ years and the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.

…

~~(8) Book value of fixed assets located within the State.~~
(9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.
(10) A letter of ~~assent, stipulating the applicant's acceptance of membership status in~~ approval for membership by the North Carolina Self-Insurance ~~Guaranty Association under Article 4 of this Chapter.~~Security Association.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to participate in the Association Aggregate Security System, or if excluded from the Association Aggregate Security System, to deposit with the Commissioner pursuant to G.S. 97-185 cash, acceptable securities, an irrevocable letter of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner, or a surety bond issued by a corporate ~~surety~~ surety, or a combination thereof, that will guarantee the applicant's compliance with this Article and the ~~Act pursuant to G.S. 97-185.~~Act."

SECTION 11. Article 5 of Chapter 97 of the General Statutes is amended by adding the following new section:

"**§ 97-177. License covering applicant and any subsidiary or applicant relying on a guarantor; procedure; requirements.**

(a) The Commissioner may, in the Commissioner's discretion, upon request by an applicant, issue a license to an applicant or to an applicant and one or more of its subsidiaries if all of the following requirements are satisfied:

(1) The applicant or a guarantor of the applicant executes a guaranty agreement, in a form prescribed by the Commissioner, for the payment of all workers' compensation liabilities covered under the Act. For any applicant or guarantor that is a corporation, there shall be submitted, along with the guaranty agreement, a board of directors' resolution from the respective corporation authorizing the guaranty of the

liabilities of the subsidiary company or companies and granting signature authority to each person or officer executing the agreement.

(2) The applicant or guarantor files a statement with the Commissioner that lists the percentage of ownership of voting securities or proxies representing voting securities owned or held by the applicant or guarantor for each subsidiary, or in the case of a not-for-profit entity, documentation acceptable to the Commissioner evidencing control.

(3) The applicant and its guarantor or the applicant and its subsidiaries, whichever applies, satisfy the requirements of G.S. 97-170(c).

(4) All other applicable requirements for licensure under the Act are satisfied.

(b) A license issued by the Commissioner pursuant to this section shall include the name of the applicant, the name of each licensed subsidiary, and the date of issuance for each licensed subsidiary.

(c) If a self-insurer requests to add a subsidiary to its license, the Commissioner shall review the request in accordance with this section. Upon approval, the Commissioner shall issue to the self-insurer a new license that includes the newly licensed subsidiary and the date of license issuance for the newly licensed subsidiary, and the self-insurer shall return the original license to the Commissioner.

(d) A self-insurer shall neither include nor delete a subsidiary from its license without the Commissioner's prior written approval.

(e) If a controlling relationship or guaranty agreement terminates, the self-insurer shall retain all liabilities under the Act that were incurred by the self-insurer during the period of self-insurance and shall account for all such liabilities until discharged, as evidenced by reports filed with the Commissioner. Termination of a guaranty agreement does not affect the guarantor's liability for payment of liabilities arising prior to termination of the agreement."

SECTION 12. G.S. 97-180 reads as rewritten:

"§ **97-180. Reporting and records.**

(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited GAAP financial statement, prepared by a CPA, for that fiscal year. The financial statement ~~formulation~~ presentation shall facilitate the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of the guarantor.

(b) Every self-insurer shall submit within 120 days after the end of its fiscal year a ~~certification~~ report from a qualified actuary setting forth ~~the actuary's~~ an opinion ~~relating to~~ certifying the loss and loss adjustment expense reserves for workers' compensation obligations ~~for~~ in North Carolina. The ~~certification~~ report shall show liabilities, excess insurance carrier and other qualifying credits, if any, and net retained workers' compensation liabilities. ~~The qualified actuary shall present an annual report to the self-insurer on the items within the scope of and supporting the certification, within 90 days after the close of the self-insurer's fiscal year. Upon request, the report shall be submitted to the Commissioner.~~

(c) Every self-insurer shall submit within 120 days after the end of its fiscal year a report in the form of a sworn statement prescribed by the Commissioner, setting forth the total workers' compensation benefits paid in the previous fiscal year, ~~as well as~~ and the total outstanding workers' compensation liabilities for each loss year, recorded at the close of its fiscal year for the net retained liability.

(d) Upon the request of the Commissioner, every self-insurer shall submit a report of its annual payroll information. The report shall summarize payroll, by annual amount paid, and the number of employees, by classification, using the rules, classifications, and rates in the most recently approved Workers' Compensation and Employers' Liability Insurance Manual governing the audits of payrolls and the adjustments of premiums. Every self-insurer shall maintain true and accurate payroll records. These payroll records shall be maintained to allow for verification of the completeness and accuracy of the annual payroll report.

(e) Every self-insurer shall report promptly to the Commissioner changes in the ~~names and addresses~~ name or address of the ~~businesses it self-insures or intends to self-insure, as well as~~ self-insurer or guarantor; significant changes in the financial ~~condition,~~ condition of the self-insurer, guarantor, or any affiliate, including bankruptcy ~~filings,~~ filings; and changes in its ~~business~~ organizational structure, including its ~~divisions, subsidiaries, affiliates, and internal organization.~~ subsidiaries and affiliates. Any change shall be reported in writing to the Commissioner within 10 days after the effective date of the change. Upon request by the Commissioner, a self-insurer shall provide the Commissioner copies of documents or information deemed necessary to determine whether any change has affected the privilege of the employer to self-insure."

SECTION 13. G.S. 97-185 reads as rewritten:

"§ **97-185. Deposits; surety bonds; letters of credit.**

~~(a) **(Effective January 1, 2005, until January 1, 2006)** Every self-insurer shall deposit with the Commissioner an amount not less than seventy-five percent (75%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.~~

~~(a) **(Effective January 1, 2006)** Every self-insurer shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.~~

(a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the Association Aggregate Security System established under G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all of the following from the Association Aggregate Security System:

(1) Individual self-insurers whose licenses have previously been revoked by the Commissioner.

(2) Individual self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's and Moody's ratings established in the written plan for the Association Aggregate Security System submitted by the Association and approved by the Commissioner under G.S. 97-133(a)(2a).

(3) Individual self-insurers that have defaulted on the payment of its self-insured workers' compensation liabilities from participation in the Association Aggregate Security System.

The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the individual self-insurers that are excluded from participating in the Association Aggregate Security System.

(b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

~~(b1) Notwithstanding subsection (a) of this section, member self-insurers with a debt rating of BBB or better from Standard and Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty five percent (25%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000). The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the member self-insurer's claims liability based on the financial strength of the self-insurer and other financial information submitted by the self-insurer.~~

(b2) An individual self-insurer that is excluded from participation in the Association Aggregate Security System, including individual self-insurers that are granted a license to self-insure after the North Carolina Self-Insurance Security Association annually implements the Association Aggregate Security System, shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer.

(b3) During any period of time that no Association Aggregate Security System is in effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty-five percent (25%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000). An individual self-insurer licensed pursuant to G.S. 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the application of this subsection. The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the individual self-insurer's claims liability based on the financial strength of the individual self-insurer and other financial information submitted by the individual self-insurer. All other individual self-insurers shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer.

(c) Deposits received, changes to existing deposits, or deposits exchanged after the effective date of this section, shall ~~comprise~~ be comprised of one or more of the following:

(1) Interest-bearing bonds of the United States of America.

(2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.

(3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.

(4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety. A surety bond deposited pursuant to this subsection shall require that the surety reimburse the Commissioner, or his successors, assigns, or transferees, for any costs incurred in the collection of the proceeds of the surety bond, including reasonable attorneys' fees, and any costs incurred in administering the insolvent self- insurer's workers' compensation claims.

(4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner. An irrevocable letter of credit deposited pursuant to this subsection shall require that the bank reimburse the Commissioner, or his ~~successor,~~ successors, assigns, or transferees for any costs incurred in the collection of the proceeds of the letter of credit, including reasonable attorneys' fees.

(4b) The reimbursement of attorneys' fees and collections cost provided for in subdivisions (4) and (4a) of this subsection shall be no greater than fifteen percent (15%) of the penal amount of the bond and shall not come from the proceeds of the bond or the letter of credit but shall be in addition to the proceeds of the bond or the letter of credit.

(5) Any other investments that are approved by the Commissioner.

(d) All bonds or securities that are posted as a security deposit shall be valued annually at market value. If the market value is less than the face value, the Commissioner may require the self-insurer to post additional securities. In making this determination, the Commissioner shall consider the self-insurer's or guarantor's financial condition, the amount by which market value is less than face value, and the likelihood that the securities will be needed to provide benefits.

(e) Securities deposited under this section shall be assigned to the Commissioner, the Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a manner that renders the securities negotiable by the Commissioner. If a self-insurer or guarantor is deemed by the Commissioner to be in a hazardous financial condition, the Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner may draw the full amount of a letter of credit if the letter of credit is not renewed within 90 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer acceptable to the Commissioner. Interest accruing on any negotiable security deposited under this Article shall be collected and transmitted to the self-insurer if the self-insurer or guarantor is not in a hazardous financial condition.

(f) No judgment creditor, other than a claimant entitled to benefits under the Act, may levy upon any deposits made under this section.

(g) ~~Securities~~ Pursuant to the provisions of this section and with the approval of the Commissioner, deposits held by the Commissioner ~~under this section~~ may be ~~exchanged or~~ replaced ~~by the self-insurer~~ with other ~~securities of like nature and amount as long as the self-insurer is not in a hazardous financial condition. No release shall be effectuated until replacement securities or bonds of an equal value have been~~

~~substituted.~~ acceptable forms of deposit in amount determined by the Commissioner. Any ~~surety bond may~~ deposit to be ~~exchanged or~~ replaced with ~~another surety bond that meets the requirements of this section if 90 days' advance written notice is given to the Commissioner. If a self-insurer ceases to self-insure or desires to replace securities with an acceptable surety bond or bonds, the self-insurer shall notify the Commissioner, and may recover all or a portion of the securities deposited with the Commissioner upon posting instead an acceptable special release bond issued by a corporate surety in an amount equal to the total value of the securities. The special release bond shall cover all existing liabilities under the Act plus an amount to cover future loss development and shall remain in force until all obligations under the Act have been discharged fully.~~ another form of deposit shall not be released until the approved replacement deposit is received by the Commissioner.

(h) ~~If a self-insurer ceases to self-insure, no deposits shall be released by the Commissioner until the self-insurer has discharged fully all of the self-insurer's obligations under the Act.~~ Any self-insurer that ceases to self-insure, whether by voluntary termination or by revocation of license, shall continue to secure and be liable for its obligations under the Act and shall continue to report to the Commissioner pursuant to G.S. 97-180. Upon the request of the Commissioner, a self-insurer that ceases to self-insure shall submit filings, as prescribed in G.S. 97-180, to determine whether the deposit is sufficient to satisfy those workers' compensation obligations incurred during the period that the self-insurer was licensed as a self-insurer. The Commissioner may require an increase in the deposit amount or may grant a reduction in the deposit amount to ensure that the deposit is sufficient to cover all existing and future obligations incurred by the self-insurer while subject to the provisions of the Act.

(i) An endorsement to a surety bond shall be filed with the Commissioner within 90 days after the effective date of the endorsement."

SECTION 14. G.S. 97-190 reads as rewritten:

"§ **97-190. Excess insurance.**

(a) Every self-insurer, as a prerequisite for licensure under this Article, shall maintain specific and aggregate excess loss coverage through an insurance policy. A self-insurer shall maintain limits and retentions commensurate with its risk. A self-insurer's retention shall be the lowest retention suitable for the self-insurer's exposures and level of annual premium. The Commissioner may require different levels, or waive the requirement, of specific and aggregate excess loss coverage consistent with the market availability of excess loss coverage, the self-insurer's claims experience, and the self-insurer's or guarantor's financial condition.

(b) An excess insurance policy required by this section shall be issued by either ~~a licensed~~ an insurance company licensed in this State or an ~~approved~~ eligible surplus lines ~~insurance company~~insurer as defined in G.S. 58-21-10 and shall:

(1) Provide for at least 30 days' written notice of cancellation by registered or certified mail, return receipt requested, to the self-insurer and to the Commissioner.

(2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the self-insurer and to the Commissioner.

(c) Every self-insurer shall provide to the Commissioner evidence of coverage and any amendments within 30 days after their effective dates. Every self-insurer shall, at the request of the Commissioner, furnish copies of its excess insurance policies and amendments."

SECTION 15. G.S. 97-195 reads as rewritten:

"§ **97-195. ~~Revocation of license.~~ Revocation, suspension or restriction of license.**

~~(a) The Commissioner summarily may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license summarily, the Commissioner may consider any or all of the following:~~

~~(1) Determination of insolvency by a court of competent jurisdiction.~~

~~(2) Institution of bankruptcy proceedings.~~

~~(3) If the self insurer is in a hazardous financial condition.~~

(a1) The Commissioner may, upon at least 45 days notice and opportunity for a hearing, revoke, suspend, or restrict the license of a self-insurer if any of the following apply:

(1) The self-insurer fails or refuses to comply with any law, order, or rule applicable to the self-insurer.

(2) There is a determination of insolvency by a court of competent jurisdiction.

(3) The self-insurer is in a hazardous financial condition.

(4) The self-insurer has experienced a material loss or deteriorating operating trends, or has reported a deficit financial position.

(5) Any affiliate or subsidiary is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation.

(6) The self-insurer has failed to pay premium taxes pursuant to Article 8B of Chapter 105 of the General Statutes.

(7) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect a self-insurer's solvency.

(8) The management of a self-insurer has failed to respond to the Commissioner's inquiries about the condition of the self-insurer or has furnished false and misleading information in response to an inquiry by the Commissioner.

(9) The management of a self-insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the filed financial information.

(10) The self-insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems.

(11) The self-insurer has failed to make proper and timely payment of claims, as required by this Article.

(12) Failure to pay any North Carolina Self-Insurance Security Association assessments made pursuant to G.S. 97-133.

(13) Failure to participate in the Association Aggregate Security System or, if excluded from participation in the Association Aggregate Security System, failure to provide and maintain the deposit required by G.S. 97-185.

~~(b) The Commissioner, upon at least 45 days' notice, may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license under this subsection, the Commissioner may consider any or all of the following:~~

~~(1) Whether the self-insurer has experienced a material loss or deteriorating operating trends, or reported a deficit financial position.~~

~~(2) Whether any affiliate or subsidiary is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation.~~

~~(3) Whether the self-insurer has failed to pay premium taxes pursuant to Article 8B of Chapter 105 of the General Statutes.~~

~~(4) Repealed by Session Laws 2003-221, s. 15, effective June 19, 2003.~~

~~(5) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect a self-insurer's solvency.~~

~~(6) Whether the management of a self-insurer has failed to respond to the Commissioner's inquiries about the condition of the self-insurer or has furnished false and misleading information in response to an inquiry by the Commissioner.~~

~~(7) Whether the management of a self-insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the filed financial information.~~

~~(8) Whether the self-insurer has experienced or will experience in the foreseeable future, cash flow or liquidity problems.~~

~~(9) Whether the self-insurer has not complied with the other provisions of this Article or the Act.~~

~~(10) Whether the self-insurer has failed to make proper and timely payment of claims as required by this Article.~~

(c) Any self-insurer subject to license ~~revocation~~ revocation, suspension, or restriction under subsection ~~(a) or (b)~~ (a1) of this section may request an administrative hearing before the Commissioner to review that order. If a hearing is requested, a notice of hearing shall be served, and the notice shall state the time and place of hearing and the conduct, condition, or ground on which the Commissioner based the order. Unless mutually agreed upon between the Commissioner and the self-insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be either in Wake County or in some other place designated by the Commissioner. The Commissioner shall hold all hearings under this section privately unless the self-insurer requests a public hearing, in which case the hearing shall be public. The request for a hearing shall not stay the effect of the order."

SECTION 16. Article 5 of Chapter 97 of the General Statutes is amended by adding the following new section:

"**§ 97-196. Civil penalties or restitution for violations; administrative procedure.**

(a) Whenever the Commissioner has reason to believe that a self-insurer has violated any of the provisions of this Article, and the violation subjects the license of the self-insurer to suspension or revocation, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(b) If the Commissioner finds a violation of this Article, the Commissioner may, in addition to or instead of suspending or revoking the license, order the payment or a monetary penalty as provided in subsection (c) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in

subsection (d) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(d) Upon petition of the Commissioner, the court may order the self-insurer who committed a violation specified in subsection (b) of this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time, and the petition may be made in any appeal of the Commissioner's order.

(e) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(f) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any self-insurer as to the status of the self-insurer's license or as to any civil penalty or restitution.

(g) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75."

SECTION 17. G.S. 58-2-161(a)(1)p. reads as rewritten:

"§ **58-2-161. False statement to procure or deny benefit of insurance policy or certificate.**

(a) For the purposes of this section:

(1) "Insurer" has the same meaning as in G.S. 58-1-5(3) and also includes:

. . .

p. The North Carolina Self-Insurance ~~Guaranty~~ Security Association under Article 4 of Chapter 97 of the General Statutes.

…"

SECTION 18. G.S. 58-30-10(7) reads as rewritten:

"§ **58-30-10. Definitions.**

As used in this Article, unless the context clearly indicates otherwise:

. . .

(7) "Domestic guaranty association" means the Postassessment Insurance Guaranty Association in Article 48 of this Chapter, as amended; the North Carolina Self-Insurance ~~Guaranty~~ Security Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers.

. . ."

SECTION 19. G.S. 58-47-65(f)(14) reads as rewritten:

"(f) The license application shall comprise the following information:

. . .

(14) A letter stipulating the applicant's acceptance of membership in the North Carolina Self-Insurance ~~Guaranty~~ Security Association under Article 4 of Chapter 97 of the General Statutes.

. . . "

SECTION 20. G.S. 105-259(b)(16a) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(16a) To provide the North Carolina Self-Insurance ~~Guaranty~~ Security Association information on self-insurers' premiums as determined under G.S. 105-228.5(b), (b1), and (c) for the purpose of collecting the assessments authorized in G.S. 97-133(a).

. . . "

SECTION 21. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 3:42 p.m. on the 14th day of September, 2005.

H.B. 1176 **Session Law 2005-401**

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, AND TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"§ **1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are

for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(b) ~~Definition. – "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article ~~and in Sections 1 and 2 of Article X of the North Carolina Constitution,~~ cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~ (4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6, effective September 1, 1982;

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household

goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve ~~him~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice ~~must~~ shall be substantially in the following form:

NORTH CAROLINA _____ COUNTY		IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
_____ Judgment Creditor vs. _____	)))))	NOTICE OF PETITION (OR MOTION) TO SET OFF DEBTOR'S EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes

money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

(1) ~~His~~ The debtor's assets, including their location;

(2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;

(3) The property ~~which~~ that ~~he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD

Judgment Creditor	)	SCHEDULE OF DEBTOR'S
	)	PROPERTY
vs.	)	AND REQUEST TO
	)	SET ASIDE EXEMPT
Judgment Debtor	)	PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;

2. That I was born on _____;
(date of birth)

3. That I am (married to _____)
(spouse's name)
_____;
(not married)

4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____
_____
_____
_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____
_____
_____
_____
_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County_____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s)_____

_____

_____

_____

Estimated Value:_____

Lienholders: _____

(1) Name _____ Current Balance _____

Address_____

(2) Name _____ Current Balance _____

Address_____

(3) Name _____ Current Balance _____

Address_____

(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value
_____	_____
_____	_____
_____	_____

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest
_____	_____	_____	_____	_____

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

_____

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8), ~~$1,500~~$1,000 allowed here; (b) if you claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of $2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County_____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value:_____

Lienholders:

(1) Name _____ Current Balance _____
Address_____

(2) Name _____ Current Balance _____
Address_____

(3) Name _____ Current Balance _____
Address_____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I

understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~16~~20. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value
_____		
_____		
_____		

This the _____ day of_____, ____

Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

Notary Public My Commission Expires:".

SECTION 4. This act becomes effective January 1, 2006, and applies to judgments and bankruptcy petitions filed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:49 p.m. on the 14th day of September, 2005.

H.B. 1349 **Session Law 2005-402**

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF PHARMACY TO RAISE ITS LICENSURE AND REGISTRATION FEES AND ESTABLISH CERTAIN NEW FEES AND MAKING CERTAIN CHANGES TO THE CONDITIONS OF LICENSE RENEWAL UNDER THE PHARMACY PRACTICE ACT AND AUTHORIZING THE NORTH CAROLINA MEDICAL BOARD TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1.1. It is the goal of the General Assembly that the Board of Pharmacy will use the funds generated by this act to enable it to conduct investigations and inspections under this Article. The Board of Pharmacy shall annually expend at least one hundred thousand dollars ($100,000) of the funds generated by this act for a Pharmacy Recovery Network.

SECTION 1.2. G.S. 90-85.12(a) reads as rewritten:

"(a) Upon receiving information concerning a violation of this ~~Article,~~ Article that is a threat to the public safety, health, or welfare, the Executive Director shall promptly conduct an ~~investigation~~investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing. If the Executive Director receives information concerning a violation of this Article that does not pose a threat to the public safety, health, or welfare, the Executive Director may conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing."

SECTION 2. Effective October 1, 2005, G.S. 90-85.24 reads as rewritten:

"§ **90-85.24. Fees collectible by Board.**

(a) The Board of Pharmacy shall be entitled to charge and collect not more than the following fees:

(1) ~~for~~ For the examination of an applicant for license as a pharmacist, ~~one hundred sixty dollars ($160.00)~~two hundred dollars ($200.00), plus the cost of the test material;

(2) ~~for~~ For renewing the license as a pharmacist, ~~one hundred ten dollars ($110.00);~~one hundred thirty-five dollars ($135.00);

(3) ~~for~~ For reinstatement of a license as a pharmacist, one hundred thirty-five dollars ($135.00);

(4) ~~for~~ For annual registration of a pharmacy technician, ~~twenty-five dollars ($25.00);~~thirty dollars ($30.00);

(5) ~~for~~ For reinstatement of a registration of a pharmacy technician, thirty dollars ($30.00);

(6) ~~for~~ For licenses without examination as provided in G.S. 90-85.20, original, ~~four hundred dollars ($400.00);~~six hundred dollars ($600.00);

(7) ~~for~~ For original registration of a pharmacy, ~~three hundred fifty dollars ($350.00),~~five hundred dollars ($500.00), and renewal thereof, ~~one hundred seventy-five dollars ($175.00);~~two hundred dollars ($200.00);

(8) ~~for~~For reinstatement of the registration of a pharmacy, two hundred dollars ($200.00);

(9) ~~for~~For annual registration as a dispensing physician under G.S. 90-85.21(b), ~~fifty dollars ($50.00);~~seventy-five dollars ($75.00);

(10) For reinstatement of registration as a dispensing physician, seventy-five dollars ($75.00);

(11) ~~for~~ For annual registration as a dispensing physician assistant under G.S. 90-18.1, ~~fifty dollars ($50.00);~~seventy-five dollars ($75.00);

(12) For reinstatement of registration as a dispensing physician assistant, seventy-five dollars ($75.00);

(13) ~~for~~ For annual registration as a dispensing nurse practitioner under G.S. 90-18.2, ~~fifty dollars ($50.00);~~seventy-five dollars ($75.00);

(14) For reinstatement of registration as a dispensing nurse practitioner, seventy-five dollars ($75.00);

(15) ~~for~~ For registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), ~~twenty-five dollars ($25.00);~~thirty-five dollars ($35.00);

(16) ~~for~~ For a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00);

(17) ~~for~~ For original registration to dispense devices, deliver medical equipment, or both, ~~three hundred dollars ($300.00) per year.~~five hundred dollars ($500.00);

(18) For renewal of registration to dispense devices, deliver medical equipment, or both, two hundred dollars ($200.00);

(19) For reinstatement of a registration to dispense devices, deliver medical equipment, or both, two hundred dollars ($200.00).

(b) All fees under this section shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists

or before any license or permit, or any renewal or reinstatement thereof, may be issued by the Board."

SECTION 3. Effective October 1, 2005, G.S. 90-85.21A(c) reads as rewritten:

"(c) The Board shall be entitled to charge and collect not more than ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than ~~one hundred twenty-five dollars ($125.00).~~two hundred dollars ($200.00), and for reinstatement thereof, not more than two hundred dollars ($200.00)."

SECTION 4. Effective January 1, 2008, G.S. 90-85.17 reads as rewritten:

"§ **90-85.17. License renewal.**

In accordance with Board regulations, each license to practice pharmacy shall expire on December 31 and shall be renewed annually by filing with the Board on or after December 1 an application for license renewal furnished by the Board, accompanied by the required fee. It shall be unlawful to practice pharmacy more than 60 days after the expiration date without renewing the license. All licensees shall give the Board notice of a change of mailing address or a change of place of employment within 30 days after the change. The Board may require licensees to obtain up to ~~10~~ 30 hours of continuing education every two years from Board-approved providers as a condition of license ~~renewal.~~renewal, with a minimum of 10 hours required per year."

SECTION 5. G.S. 90-15 reads as rewritten:

"§ **90-15. License fee; salaries, fees, and expenses of Board.**

Each applicant for a license ~~by examination~~to practice medicine and surgery in this State under either G.S. 90-9, 90-10, or 90-13 shall pay to the North Carolina Medical Board ~~a fee which shall be prescribed by the Board in an amount not exceeding the sum of four hundred dollars ($400.00) plus the cost of test materials before being admitted to the examination. Whenever a license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by the Board not in excess of two hundred fifty dollars ($250.00).~~an application fee of three hundred fifty dollars ($350.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee not to exceed one hundred fifty dollars ($150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of ~~twenty-five dollars ($25.00),~~one hundred dollars ($100.00), and where a limited license to practice medicine and surgery only at clinics that specialize in the treatment of indigent patients is granted, the applicant shall not pay a fee. A fee of twenty-five dollars ($25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board. The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars ($200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount."

SECTION 6. G.S. 90-15.1 reads as rewritten:

"§ **90-15.1. Registration every year with Board.**

Every person licensed to practice medicine by the North Carolina Medical Board shall register annually with the Board within 30 days of the person's birthday. A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee of ~~one hundred twenty-five dollars ($125.00).~~one hundred seventy-five dollars ($175.00), except those who have a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training shall pay a registration fee of one hundred twenty-five dollars ($125.00) and those who have a limited volunteer license shall pay an annual registration fee of twenty-five dollars ($25.00). A physician who is not actively engaged in the practice of medicine in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status. For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register as required by this section shall pay an additional fee of ~~twenty dollars ($20.00)~~fifty dollars ($50.00) to the Board. The license of any physician who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive. Except as provided in G.S. 90-12(d), a person whose license is inactive shall not practice medicine in North Carolina nor be required to pay the annual registration fee. Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements. The penalty may not exceed the maximum fee for a license under G.S. 90-13."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 7:24 p.m. on the 19th day of September, 2005.

H.B. 254 **Session Law 2005-403**

AN ACT TO AUTHORIZE THE STATE TREASURER TO ISSUE "GARVEE" GRANT ANTICIPATION REVENUE VEHICLE BONDS ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION, TO REQUIRE "GARVEE" FUNDS TO BE DISTRIBUTED IN ACCORDANCE WITH THE EQUITY DISTRIBUTION FORMULA, AND TO DIRECT THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND THE STATE TREASURER TO DEVELOP AN IMPLEMENTATION PLAN FOR ISSUANCE OF THE BONDS, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, AND TO CLARIFY THE DEFINITION OF GOVERNMENTAL UNIT FOR PURPOSES OF INTEREST RATE SWAP AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. The Secretary of the Department of Transportation and the State Treasurer shall jointly form a committee to develop a plan to implement the

provisions of this act. The plan shall address all financial, legal, and practical issues involved in issuing "GARVEE" bonds. The plan shall be submitted to the Board of Transportation for review and comment. Following review of the plan by the Board, the two Departments shall jointly submit their implementation plan to the cochairs of the Transportation Appropriations Subcommittee and the cochairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005.

SECTION 2. G.S. 136-18 is amended by adding a new subdivision to read:

"(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt-financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the seven-year period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment."

SECTION 3. G.S. 136-17.2A is amended by adding a new subsection to read:

"(i) All funds derived from "GARVEE" bonds issued pursuant to G.S. 136-18(12b) shall be distributed in accordance with this section."

SECTION 4. G.S. 159-193(1) reads as rewritten:

"§ **159-193. Definitions.**

The following definitions apply in this Article:

(1) Governmental unit. – Any of the following:

a. A unit of local government as defined in G.S. 159-44.

b. A municipality as defined in G.S. 159-81.

c. A joint agency as defined in G.S. 159B-3.

d. Any department, agency, board, commission, or authority of the State that is authorized by law to issue bonds.

e. The State Treasurer ~~when participating in the issuance or incurrence~~ in connection with the issuance, incurrence, carrying, or securing of obligations for or on behalf of the State pursuant to an act of the General Assembly.

…"

SECTION 5. Section 2 of this act becomes effective February 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 11:14 a.m. on the 20th day of September, 2005.

H.B. 750 **Session Law 2005-404**

AN ACT RELATING TO THE IMPROVEMENT OF SECONDARY ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.2A reads as rewritten:

"§ **136-44.2A. Secondary road ~~construction.~~improvement program.**

There shall be annually allocated ~~out of~~ from the ~~State~~ Highway Fund to the Department of Transportation for secondary road ~~construction~~ improvement programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made from the Highway Fund under G.S. 136-41.1(a). In addition, as provided in G.S. 136-176(b)(4) and G.S. 20-85(b), revenue is annually allocated from the Highway Trust Fund for secondary road construction. Of the funds allocated from the Highway ~~Fund and the Highway Trust~~ Fund, the sum of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated among the counties in accordance with G.S. 136-44.5(b). All funds allocated from the Highway Fund for secondary road ~~construction~~ improvements in excess of that amount shall be allocated among the counties in accordance with G.S. 136-44.5(c). All funds allocated from the Highway Trust Fund for secondary road improvement programs shall be allocated in accordance with G.S. 136-182."

SECTION 2. G.S. 136-44.5 reads as rewritten:

"§ **136-44.5. Secondary roads; mileage study; allocation of funds.**

(a) Before July 1, in each calendar year, the Department of Transportation shall make a study of all ~~state-maintained~~ State-maintained unpaved and paved secondary roads in the State. The study shall ~~determine~~ determine:

(1) ~~the~~ The number of miles of unpaved ~~state-maintained~~ State-maintained roads in each ~~county,~~ county eligible for paving and the total number of miles that are ineligible;

(2) The total number of miles of unpaved ~~state-maintained~~ State-maintained roads in the ~~State, the number of miles of unpaved state-maintained roads in each county that have a traffic vehicular equivalent of at least 50 vehicles a day, and the total number of miles of unpaved state-maintained roads in the State that have a traffic vehicular equivalent of at least 50 vehicles a day.~~ State eligible for paving and the total number of miles that are ineligible; and

(3) The total number of paved State-maintained roads in each county, and the total number of miles of paved State-maintained roads in the State.

In this subsection, (i) ineligible unpaved mileage is defined as the number of miles of unpaved roads that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, and (ii) eligible unpaved mileage is defined as the number of miles of unpaved roads that have not been previously approved for paving by any funding source or has the potential to be programmed for paving when rights-of-way or environmental permits are secured. Except for federal-aid programs, the Department shall allocate all secondary road ~~construction~~ improvement funds on the basis of a formula using the study figures.

(b) The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated as follows: Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of paved and unpaved ~~state-maintained~~ State-maintained secondary roads in the county divided by the total number of miles of unpaved ~~state-maintained~~ State-maintained secondary roads in the ~~State.~~State, excluding those unpaved secondary roads that have been determined to be eligible for paving as defined in subsection (a) of this section. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

(c) Funds allocated for secondary road construction in excess of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated to each county based on the percentage proportion that the number of miles in the county of ~~state-maintained~~ State-maintained unpaved secondary roads ~~with a traffic vehicular equivalent of at least 50 vehicles a day~~ bears to the total number of miles in the ~~State~~ State of ~~state-maintained~~ State-maintained unpaved secondary ~~roads with a traffic vehicular equivalent of at least 50 vehicles a day.~~roads. In a county that has roads with eligible miles, these funds shall only be used for paving unpaved secondary road miles in that county. In a county where there are no roads eligible to be paved as defined in subsection (a) of this section, the funds may be used for improvements on the paved and unpaved secondary roads in that county. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

(d) Copies of the Department study of unpaved and paved ~~state-maintained~~ State-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county."

SECTION 3. G.S. 136-182 reads as rewritten:

"§ **136-182. Supplement for secondary road ~~construction.~~improvement.**

Funds are allocated from the Trust Fund to increase allocations for secondary road ~~construction~~ improvement made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads ~~with a traffic vehicular equivalent of at least 50 vehicles a day~~ eligible for paving pursuant to G.S. 136-44.5(a) can be paved by the 2009-2010 fiscal

year. ~~If all the State-maintained roads in a county have been paved under G.S. 136-44.7, except those that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, then the funds may be used for safety improvements on the paved or unpaved secondary roads in that county.~~

Allocations of these funds shall be based on the percentage proportion of the number of miles in the county of State-maintained unpaved secondary roads that are eligible to be paved under G.S. 136-44.5(a) bears to the total number of miles in the State of State-maintained unpaved secondary roads that are eligible to be paved.

As an exception to the formula for the allocation of these funds, the Department may, beginning in the 2006-2007 fiscal year and until the 2009-2010 fiscal year, set aside up to five million dollars ($5,000,000) to pay for the paving of any unpaved secondary road that had previously been determined to be ineligible for paving.

Beginning in fiscal year 2010-2011, allocations from the Trust Fund shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage."

SECTION 4. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 11:15 a.m. on the 20th day of September, 2005.

H.B. 1635 **Session Law 2005-405**

AN ACT AMENDING THE LAWS PERTAINING TO DISPLACED HOMEMAKERS AND INCREASING THE FEE WHICH FUNDS THE NORTH CAROLINA FUND FOR DISPLACED HOMEMAKERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-394.4 reads as rewritten:

"§ **143B-394.4. Definitions.**

As used in this Part, unless the context otherwise requires:

(1) "Center" means any multi-purpose ~~service~~ facility ~~for~~or program serving displaced ~~homemakers established pursuant to this Part;~~homemakers.

(2) "Council" means the North Carolina Council for ~~Women;~~Women.

(3) "Department" means the Department of ~~Administration;~~Administration.

(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household ~~for at least five years and during which period~~and has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required ~~training~~ training, age, or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support ~~from a spouse~~ but is within two years of losing ~~such~~ the support, or has been supported by public assistance as the parent of minor children ~~but~~ and is no longer

~~eligible, or is within two years of losing such eligibility.~~eligible."

SECTION 2. G.S. 143B-394.5 reads as rewritten:

"§ **143B-394.5. Establishment of center; location.**

The Council shall establish or contract for the establishment of a pilot center for displaced homemakers. ~~In determining where to locate the center, the Council shall consider, with respect to each proposed location, the probable number of displaced homemakers in the area and the availability of resources for training and education.~~"

SECTION 3. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-394.5A. Location of displaced homemaker centers; grant criteria.**

(a) The Council shall consider the location of displaced homemaker centers based on the probable number of displaced homemakers in an area, the availability of resources for training and education, and viable living wage job opportunities.

(b) The Council shall make grants to displaced homemaker centers in accordance with this section and G.S. 143B-394.10. The Council shall establish criteria, including a baseline cost of basic center operations, to determine grant award categories. The grant criteria shall incorporate displaced homemaker program operational costs based on the location, program delivery capacities, and the probable number of displaced homemakers served in an area."

SECTION 4. G.S. 143B-394.10 reads as rewritten:

"§ **143B-394.10. North Carolina Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to ~~programs~~up to 35 centers for displaced homemakers. The Council shall make quarterly grants to ~~each~~ no more than 35 eligible ~~program.~~centers. Grants shall be awarded according to criteria established by the ~~Council.~~Council pursuant to G.S. 143B-394.4(4) and G.S. 143B-394.5A. ~~No more than ten percent (10%)of these funds shall be used for administrative costs by the Council.~~The Council shall use no more than ten percent (10%) of these funds for administrative costs. ~~In order to~~ To be eligible to receive grant funds under this section, a displaced homemaker ~~program~~center shall fulfill all of the criteria established by the ~~Council.~~Council and shall have been operational for at least two years. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers."

SECTION 5. G.S. 7A-305(a2) reads as rewritten:

"(a2) In every ~~final~~ action for absolute divorce filed in the district court, a cost of ~~twenty dollars ($20.00)~~fifty-five dollars ($55.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

SECTION 6. Section 5 of this act becomes effective October 1, 2005, and applies to actions for absolute divorce filed on or after that date. The remainder of this act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:09 p.m. on the 20th day of September, 2005.

S.B. 868 **Session Law 2005-406**

AN ACT TO AMEND THE ENTERPRISE TIER STRUCTURE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT AND TO ALLOW FOR A REFUND OF EXCISE TAX ON UNSALABLE CIGARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.3 is amended by adding a new subsection to read:

"(d1) Exception for Certain Multi-Jurisdictional Industrial Park. – For the purpose of this Article, an eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest enterprise tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in four or more contiguous counties.

(2) At least two of the counties in which the industrial park is located are enterprise tier one areas.

(3) The industrial park is owned by four or more units of local government or a nonprofit corporation owned or controlled by four or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 300 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates."

SECTION 2. G.S. 105-113.39 reads as rewritten:

"§ **105-113.39.** ~~**Discount.**~~**Discount; refund.**

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part, who files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers losses due to damage to tobacco products, expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A wholesale dealer or retail dealer who is primarily liable under G.S. 150-113.35(b) for the excise taxes imposed by this Part and is in possession of stale or otherwise unsalable cigars upon which the tax has been paid may return the cigars to the manufacturer and apply to the Secretary for refund of the tax. The

application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigars returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigars."

SECTION 3. Section 1 of this act is effective for taxable years beginning on or after January 1, 2005. Section 2 of this act becomes effective September 1, 2005. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:10 p.m. on the 20th day of September, 2005.

S.B. 528 **Session Law 2005-407**

AN ACT TO ALLOW A MUNICIPALITY TO USE PROJECT DEVELOPMENT FINANCING FOR TOURISM-RELATED DEVELOPMENT PROJECTS LOCATED IN AN ENTERPRISE TIER ONE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.3(a)(1) reads as rewritten:

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

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in an enterprise tier one area, as defined in G.S. 105-129.3, and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers."

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

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:15 p.m. on the 20th day of September, 2005.

S.B. 590 **Session Law 2005-408**

AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

"§ **14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.**

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

(1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.

(2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.

(3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.

(4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.

(5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

(6) An attorney-at-law licensed to practice in this State who is not employed by a debt adjuster.

(7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:

a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.

b. Determines that the debtor has the financial ability to make payments to complete the debt management plan and that the plan is suitable for the debtor.

c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with no more than nominal consideration and has agreed to in writing.

d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent

period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.

e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.

f. Does not receive a payment, commission, or other benefit for referring the debtor to a provider of services.

g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services."

SECTION 2. G.S. 14-423 reads as rewritten:

"§ **14-423. Definitions.**

(a) As used in this ~~Article certain terms or words are hereby defined as follows:~~Article, the following definitions apply:

(1) ~~The term "debt"~~"Debt adjuster" means a person who engages in, attempts to engage in, or offers to engage in the practice or business of debt ~~adjusting as said term is defined in this Article.~~adjusting.

(2) ~~The term "debt"~~"Debt adjusting" ~~shall mean the~~means entering into or making ~~of~~ a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business and ~~who shall~~that person, for ~~a~~ consideration, ~~agree~~ agrees to distribute, or ~~distribute~~ distributes the same among certain specified creditors in accordance with a plan agreed upon. ~~The term "debt adjusting" is further defined and shall also mean~~Debt adjusting includes the business or practice of any person who holds himself out as acting or offering or attempting to act for ~~a~~ consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in ~~anywise~~ any way altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor. Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the debtor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

(3) ~~The term or word "debtor"~~"Debtor" means an ~~individual,~~individual who resides in North Carolina, and includes two or more individuals who are jointly and ~~severally~~ severally, or jointly or ~~severally~~ severally, indebted to a creditor or creditors.

(3a) "Nominal consideration" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars ($40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars ($40.00) per month.

(4) ~~The word "person~~"Person" means an individual, firm, partnership, limited partnership, ~~corporation~~ corporation, or association."

SECTION 3. G.S. 14-425 reads as rewritten:

"§ **14-425. Enjoining practice of debt adjusting; appointment of receiver for money and property employed.**

The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~ enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services. The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to ~~insure,~~ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors. The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

SECTION 4. G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes effective October 1, 2005. G.S. 14-423(a)(2) as amended by Section 2 of this act becomes effective December 31, 2005. The remainder of this act is effective when it becomes law. This act expires October 1, 2007.

In the General Assembly read three times and ratified this the 29th day of August, 2005.

Became law upon approval of the Governor at 1:16 p.m. on the 20th day of September, 2005.

H.B. 1527 **Session Law 2005-409**

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-297.1 reads as rewritten:

"§ **20-297.1. ~~Prefiling of franchise agreements and amendments.~~Franchise-related form agreements.**

~~Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State,~~

~~shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:~~

~~(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;~~

~~(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.~~

~~It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article.~~

(a) All franchise-related form agreements, as defined in this subsection, offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. For purposes of this section, the term "franchise-related form agreements" means one or more contracts between a franchised motor vehicle dealer and a manufacturer, factory branch, distributor, or distributor branch, including a written communication from a manufacturer or distributor in which a duty is imposed on the franchised motor vehicle dealer under which:

(1) The franchised motor vehicle dealer is granted the right to sell and service new motor vehicles manufactured or distributed by the manufacturer or distributor or only to service motor vehicles under the contract and a manufacturer's warranty;

(2) The franchised motor vehicle dealer is a component of the manufacturer or distributor's distribution system as an independent business;

(3) The franchised motor vehicle dealer is substantially associated with the manufacturer or distributor's trademark, trade name, and commercial symbol;

(4) The franchised motor vehicle dealer's business substantially relies on the manufacturer or distributor for a continued supply of motor vehicles, parts, and accessories; or

(5) Any right, duty, or obligation granted or imposed by this Chapter is affected.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to offer to a dealer, revise, modify, or replace a franchise-related form agreement, as defined above in this section, which agreement, modification, or replacement may adversely affect or alter the rights, obligations, or liability of a motor vehicle dealer or may adversely impair the sales, service obligations, investment, or profitability of any motor vehicle dealer located in this State, unless:

(1) The manufacturer, factory branch, distributor, or distributor branch provides prior written notice by registered or certified mail to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, Inc., of the modification or replacement in the

form and within the time frame set forth within this section and in subsection (c) of this section; and

(2) If a protest is filed under this section, the Commissioner approves the modification or replacement.

(c) The notice required by subdivision (b)(1) of this section shall:

(1) Be given not later than the 60th day before the effective date of the modification or replacement;

(2) Contain on its first page a conspicuous statement that reads: 'NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE COMMISSIONER OF THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED INITIAL OFFERING, MODIFICATION, OR REPLACEMENT OF CERTAIN FRANCHISE-RELATED FORM AGREEMENTS UNDER THE TERMS OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, IF YOU OPPOSE THIS ACTION'; and

(3) Contain a separate letter or statement that identifies all substantive modifications or revisions and the principal reasons for each such modification or revision.

(d) A franchised dealer may file a protest with the Commissioner of the offering, modification, or replacement pursuant to this section not later than the latter of:

(1) The 60th day after the date of the receipt of the notice; or

(2) The time specified in the notice.

(e) After a protest is filed, the Commissioner shall determine whether the manufacturer, factory branch, distributor, or distributor branch has established by a preponderance of the evidence that there is good cause for the proposed offering, modification, or replacement. The prior franchise-related form agreement, if any, continues in effect until the Commissioner resolves the protest.

(f) The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any franchise-related form agreement with the provisions of this Article.

(g) Nothing contained in this section shall in any way limit a dealer's rights under any other provision of this Article or other applicable law."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"§ **20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

…

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training

programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration ~~which~~ that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions ~~which~~ that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2006.~~2010.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2006.~~2010.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 12A.

"Motor Vehicle Captive Finance Source Law.

"§ **20-308.3. Regulation of motor vehicle captive finance sources.**

The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate motor vehicle captive finance sources doing business in North Carolina to protect and preserve the investments and properties of the citizens of this State.

"**§ 20-308.4. Definitions.**

The definitions contained in G.S. 20-286 shall be applicable to the provisions of this Article.

"**§ 20-308.5. Prohibited contractual requirements imposed by manufacturer, distributor, or captive finance source.**

It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this State to agree to any terms, conditions, or requirements that are set forth in subdivisions (1) through (8) below in order for any such dealer to sell to any captive finance source (defined below) any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers ("contract for sale or lease"), or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any consumer transaction incentive program payable to the consumer or the dealer and offered by or through any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in North Carolina and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch ("captive finance source").

(1) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer's name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer's finance application or title processing document, or is for the purpose of processing regular titling of the vehicle.

(2) Require a dealer to warrant or guarantee the accuracy and completeness of any personal, financial, or credit information provided by the customer on the credit application and/or in the course of applying for credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer's knowledge.

(3) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer's material breach of the terms of a written agreement with the captive finance source or the terms for the

purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subdivisions (1) through (8) of this section, or (ii) the subject dealer's violation of applicable law. For purposes of this section, the dealer may, however, contractually obligate itself to warrant the accuracy of the information provided on the finance contact, but such warranty can only be enforced if the captive finance source gives the dealer a reasonable opportunity to cure or correct any errors on the finance contract where cure or correction is possible. For purposes of this section, any allegation by a third party that would constitute a breach of the terms of a written agreement between the dealer and a captive finance source shall be considered a material breach.

(4) Notwithstanding the terms of any contract or agreement, treat a dealer's breach of an agreement between the dealer and a captive finance source with respect to the captive finance source's purchase of individual contracts for the sale or lease of a motor vehicle as a breach of such agreement with respect to purchase of other such contracts, nor shall such a breach, in and of itself, constitute a breach of any other agreement between the dealer and the captive finance source, or between the dealer and any affiliate of such captive finance source.

(5) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws.

(6) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer's voluntary and written consent subsequent to the filing of such litigation.

(7) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer's account. This section shall not apply to or limit (i) reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself; (ii) a delay or reduction in the payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or (iii) a chargeback to a dealer (or offset of any amounts otherwise payable to a dealer by the captive finance source) for any indebtedness properly owing from a dealer to the captive finance source as part of a specific program covered by this section, the terms of which have been agreed to by the dealer in advance, except to the extent such chargeback would otherwise be prohibited under subdivisions (1) through (8) of this section.

(8) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be voidable, to the extent that it violates this section, at any time at the election of the dealer."

"§ **20-308.6. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a captive finance source with whom the dealer does business in North Carolina has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named captive finance source requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other remedy, bring an action in the name of the State against that person and any other persons concerned or in any way participating in, or about to participate in, practices or acts so in violation, to enjoin any persons from continuing the violations.

(e) The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section.

(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the captive finance source through an appeals board or internal grievance procedure of the captive finance source, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the captive finance source, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the captive finance source's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the captive finance source has been completed and the dealer has

received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the captive finance source before seeking redress from the Commissioner as provided in this Article.

"**§ 20-308.7. Rules and regulations.**

The Commissioner may make such rules and regulations, not inconsistent with the provisions of this Article, as he shall deem necessary or proper for the effective administration and enforcement of this Article, provided that a copy of such rules and regulations shall be mailed to each motor vehicle dealer licensee and captive finance source 30 days prior to the effective date of such rules and regulations.

"**§ 20-308.8. Hearing notice.**

In every case of a hearing before the Commissioner authorized under this Article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 150B of the General Statutes. The costs of such hearings shall be assessed by the Commissioner.

"**§ 20-308.9. Article applicable to existing and future agreements.**

The provisions of this Article shall be applicable to all contracts and agreements existing between dealers and captive finance sources at the time of its ratification and to all such future contracts and agreements.

"**§ 20-308.10. Jurisdiction.**

A new motor vehicle dealer located in this State may bring suit against any captive finance source engaged in commerce in this State in the General Court of Justice in the State of North Carolina that has proper venue.

"**§ 20-308.11. Civil actions for violations.**

(a) Notwithstanding the terms, provisions, or conditions of any agreement or other terms or provisions of any novation, waiver, arbitration agreement, or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to an agreement who is so injured in his business or property by a violation of a provision of this Article relating to that agreement, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a captive finance source may have the effect of causing a loss of money or property.

(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective

interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and captive finance source shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more captive finance sources doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a captive finance source doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding agreements with that captive finance source in this State. With respect to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages.

"**§ 20-308.12. Applicability of this Article.**

(a) Any captive finance source who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising the availability of financing for the sale or lease of motor vehicles within this State, or who has business dealings within this State, shall be subject to the provisions of this Article and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this Article shall not be affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(c) Any provision of any agreement, waiver, novation, or any other written instrument which is in violation of any section of this Article shall be deemed null and void and without force and effect to the extent it violates this section.

(d) It shall be unlawful for a captive finance source to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this Article on the part of the captive finance source."

SECTION 4. Article 12 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.7. Protecting dealership data and consent to access dealership information.**

(a) No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch,

distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(b) No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide such access. Prior to obtaining said consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall provide to the dealer a written list of all third parties to whom any North Carolina dealer management computer system data has been provided within the 12-month period ending November 1 of the prior year. The list shall further describe the scope of the data provided. In addition to the initial list, a dealer management computer system vendor or any third party acting on behalf of, or through a dealer management computer system vendor shall provide to the dealer an annual list of third parties to whom said data is being provided on November 1 of each year and to whom said data has been provided in the preceding 12 months and describe the scope of the data provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any such person's obligations to comply with the terms of this section and any additional State or federal laws (and any rules or regulations promulgated thereunder) applicable to them with respect to such access. In addition, no dealer management computer system vendor may refuse to provide a dealer management computer system to a motor vehicle dealer located in this State if the dealer refuses to provide any consent under this subsection, except to the extent that consent is deemed by the parties to be reasonably necessary in order for the vendor to provide the system to the dealer.

(c) No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, may access or obtain data from or write data to a dealer management computer system utilized by a motor vehicle dealer located in this State, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the customer and dealership information maintained in the system. No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer’s computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third

party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability.

(d) Any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to customer or motor vehicle dealership data in a dealership management computer system utilized by a motor vehicle dealer located in this State shall provide notice to the dealer of any security breach of dealership or customer data obtained through such access, which at the time of the breach was in the possession or custody of the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party. The disclosure notification shall be made without unreasonable delay by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party following discovery by the person, or notification to the person, of the breach. The disclosure notification shall describe measures reasonably necessary to determine the scope of the breach and corrective actions which may be taken in an effort to restore the integrity, security, and confidentiality of such data. Such measures and corrective actions shall be implemented as soon as practicable by all persons responsible for the breach.

(e) Nothing in this section shall preclude, prohibit, or deny the right of the manufacturer, factory branch, distributor, or distributor branch to receive customer or dealership information from a motor vehicle dealer located in this State for the purposes of complying with federal or State safety requirements or implementing steps related to manufacturer recalls at such times as necessary in order to comply with federal and State requirements or manufacturer recalls provided that receiving this information from the dealer does not impair, alter, or reduce the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer.

(f) The following definitions apply to this section:

(1) "Dealer management computer system" – A computer hardware and software system having dealer business process management modules that provide real time access to customer records and transactions by a motor vehicle dealer located in this State and that allow such motor vehicle dealer timely information in order to sell vehicles, parts or services through such motor vehicle dealership.

(2) "Dealer management computer system vendor" – A seller or reseller of dealer management computer systems (but only to the extent that such person is engaged in such activities).

(3) "Security breach" – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information shall constitute a security breach.

(g) The provisions of G.S. 20-308.1(d) shall not apply to an action brought under this section against a dealer management computer system vendor.

(h) This section shall apply to contracts entered into on or after November 1, 2005."

SECTION 5. G.S. 20-308 reads as rewritten:

"§ **20-308. Penalties.**

Any person violating any of the provisions of this ~~Article~~ Article, except for G.S. 20-305.7, shall be guilty of a Class 1 misdemeanor."

SECTION 6. G.S. 20-308.2 is amended by adding a new subsection to read:

"(e) The provisions of this Article shall apply to all written agreements between a manufacturer, wholesaler, or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a motor vehicle dealer and a manufacturer, wholesaler, or distributor."

SECTION 7. G.S. 20-286(10) reads as rewritten:

"§ **20-286. Definitions.**

The following definitions apply in this Article:

…

(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle ~~which~~ that has never been the subject of a completed, successful, or conditional sale that was subsequently approved ~~sale~~ other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above."

SECTION 8. Section 3 of this act becomes effective January 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:19 p.m. on the 20th day of September, 2005.

S.B. 757 **Session Law 2005-410**

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that -

(1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission ~~at regular intervals of not less than three weeks and not more than six weeks apart and~~ in accordance with such regulations as the Commission may prescribe;

(2) ~~He~~ The individual has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. ~~For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:~~

~~a. 1. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;~~

~~2. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and~~

~~3. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,~~

~~b. Such approval is required for the Commission to receive the benefits of federal law.~~

a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation solely on the basis that the individual is in school.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(6) An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:

a. The claimant's monetary eligibility is based predominately on wages from part-time work.

b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.

This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers."

SECTION 2. G.S. 96-9(b)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 does apply, not the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages as reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%

3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 3. G.S. 96-9(a)(3)d5. reads as rewritten:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, for any calendar year that the training and reemployment contribution in G.S. 96-6.1 applies, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund on computation date equals or exceeds ~~eight hundred million dollars ($800,000,000) on the computation date,~~ one and ninety-five hundredths percent (1.95%) of the gross taxable wages reported to the Commission in the previous calendar year, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%

1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0%	&									
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%"

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(28) Willfully. – For the purposes of this Chapter, the terms 'willfully' and 'knowingly' shall have the same meaning."

SECTION 5. G.S. 96-9(c)(4)a. reads as rewritten:

"(c) …

(4) Transfer of account. –

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person

or entity is not an employer at the time of the acquisition and (ii) the person or entity acquired the business or account primarily for the purpose of obtaining a reduced rate of contribution.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has

been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification."

SECTION 6. G.S. 96-18(b1) reads as rewritten:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.
(2) A contribution of more than two thousand dollars ($2,000) has not been paid.
(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Commission finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement."

SECTION 7. Sections 2 and 3 of this act become effective October 1, 2005. Section 6 of this act becomes effective December 1, 2005. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:20 p.m. on the 20th day of September, 2005.

S.B. 290 **Session Law 2005-411**

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 of the General Statutes to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, a business, or an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the

owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"**§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"**§ 41-42. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"**§ 41-43. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"**§ 41-44. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"**§ 41-45. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"**§ 41-46. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"**§ 41-47. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a

registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) This Article does not repeal or modify any provision of law relating to estate taxes.

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary or contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr.'

(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown, Jr. SUB BENE Peter O. Brown'.

"§ **41-50. Short title; rules of construction.**

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining whether a right of survivorship exists among multiple owners of a security.

"§ **41-51. Application of Article.**

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

SECTION 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.

(2) Gifts causa mortis made by the ~~decedent;~~decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

SECTION 3. G.S. 41-2.2 reads as rewritten:

"§ **41-2.2. Joint ownership of ~~corporate stock and investment~~ securities.**

(a) In addition to other forms of ownership, ~~shares of corporate stock or investment~~ securities may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in ~~shares of corporate stock or investment~~ securities as provided by this section shall exist when such ~~shares or~~ securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the ~~shares or~~ securities for the joint tenants and by book entry or otherwise indicates (i) that the ~~shares or~~ securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian

derived from the sale of, or held for the purpose of, such ~~shares or~~ securities shall be treated in the same manner as such ~~shares or~~ securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10)."

SECTION 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:22 p.m. on the 20th day of September, 2005.

H.B. 735 **Session Law 2005-412**

AN ACT TO REQUIRE ANNUAL FILING AND ACTUARIAL CERTIFICATION OF RATES FOR INSURERS PROVIDING INDIVIDUAL ACCIDENT AND HEALTH INSURANCE BENEFITS AND TO BETTER PROTECT CONSUMERS FROM THE HARMFUL IMPACT OF BLOCKS OF BUSINESS BEING CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-51-95(f) reads as rewritten:

"§ **58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

(f) An insurer may ~~increase~~ revise rates chargeable on policies subject to this section, other than noncancellable policies, with the approval of the Commissioner if the Commissioner finds that the revised rates are not excessive, not inadequate, and not unfairly discriminatory; and exhibit a reasonable relationship to the benefits provided by the policies. The approved rates shall be guaranteed by the insurer, as to the policyholders affected by the rates, for a period of not less than 12 months; or as an alternative to the insurer giving the guarantee, the approved rates may be applicable to all policyholders at one time if the insurer chooses to apply for that relief with respect to those policies no more frequently than once in any 12-month period. The rates shall be applicable to all policies of the same type; provided that no rate ~~increase~~ revision may become effective for any policy unless the insurer has given the policyholder written notice of the rate revision 45 days before the effective date of the revision. The policyholder must then pay the revised rate in order to continue the policy in force. The Commissioner may adopt reasonable rules, after notice and hearing, to require the submission of supporting data and such information as the Commissioner considers

necessary to determine whether the rate revisions meet these standards. In adopting the rules under this subsection, the Commissioner may require identification of the types of rating methodologies used by filers and may also address issue age or attained age rating, or both; policy reserves used in rating; and other recognized actuarial principles of the NAIC, the American Academy of Actuaries, and the Society of Actuaries."

SECTION 1.(b) G.S. 58-51-95 is amended by adding the following new subsections to read:

"§ **58-51-95. Approval by Commissioner of forms, classification and rates; hearing; exceptions.**

…

(h) Every policy that is subject to this section and that provides individual accident and health insurance benefits to a resident of this State shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner may adopt rules or utilize existing rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience and earned premiums in accordance with accepted actuarial principles and practices to assure that the benefits are reasonable in relation to the premium charged. Every insurer providing policies in this State subject to this section shall not less than annually file for approval its rates, rating schedules, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this State as adopted by the Commissioner. All filings of rates and rating schedules shall comply with the standards adopted by the Commissioner. The filing shall include a certification by an individual who is either a Fellow or an Associate of the Society of Actuaries or a Member of the American Academy of Actuaries that the rates are not excessive, not inadequate, and not unfairly discriminatory; and that the rates exhibit a reasonable relationship to the benefits provided by the policy. Nothing in this subsection shall require an insurer to provide certification with respect to a previous rate period, or to require an insurer to reduce properly filed and approved rates before the end of a rate period. This subsection does not apply to any long-term care policy issued in this State on or after February 1, 2003, and noncancellable accident and health insurance.

(i) For any long-term care policy issued in this State on or after February 1, 2003, an insurer shall on or before March 15 of each year:

(1) Provide to the Commissioner an actuarial certification listing all of its long-term care policy forms available for sale in this State as of December 31 of the prior year, stating that the current premium rate schedule for each form is sufficient to cover anticipated costs under moderately adverse experience and stating that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated.

(2) For any policy form for which the statement in subdivision (1) of this subsection cannot be made or is qualified, submit a plan of corrective action to the Commissioner for approval.

(j) For purposes of this section, accident and health insurance means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any

combination thereof. Notwithstanding any other provision to the contrary, subsection (h) of this section does not apply to disability income insurance."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ **58-3-275. Closure of a block of business.**

(a) An insurer that determines to create a closed block of business in this State shall no later than 60 days prior to the closure date:

(1) Notify the Commissioner in writing of the insurer's decision to cease sales of the policy form(s) and provide a reasonable estimate, based on sound actuarial principles, of the expected impact on future premiums of ceasing sales of the policy form(s). If the insurer's qualified actuary estimates that the expected impact on future annual premiums of ceasing sales of the policy form(s) exceeds five percent (5%) per annum, then the insurer shall comply with the requirements of subdivision (3) of this subsection. If each subsequent annual premium rate filing results in an approved annual premium rate increase no greater than the last premium rate increase approved when the block of insurance was open, plus five percent (5%) per annum, then the insurer shall not be required to comply with the requirements of subdivision (3) of this subsection. If any subsequent annual premium rate filing results in an approved premium rate increase in excess of five percent (5%) per annum more than the last premium rate increase approved while the block of insurance was open, then the insurer shall comply with the requirements of subdivision (3) of this subsection at the time the filing is approved, unless the insurer can demonstrate to the satisfaction of the Commissioner that the portion of the increase that is due to the closing of the block is not more than five percent (5%) per annum.

(2) Inform each agent and broker selling the product of the decision and the date of closure.

(3) If required pursuant to subdivision (1) of this subsection, notify all affected policyholders of the determination and provide a statement of the general effect that might be expected to result from the closure of the block. Notice shall comply with any rules adopted pursuant to subsection (b) of this section.

(b) The Commissioner may adopt rules to carry out the purposes and provisions of this section, including rules establishing the language, content, format, and methods of distribution of the notices required by this section.

(c) As used in this section, the term:

(1) 'Accident and health insurance' means insurance against death or injury resulting from accident or from accidental means and insurance against disablement, disease, or sickness of the insured. This includes Medicare supplemental insurance, long-term care, nursing home, or home health care insurance, or any combination thereof, specified disease or illness insurance, hospital indemnity or other fixed indemnity insurance, short-term limited duration health insurance, dental insurance, vision insurance, and medical, hospital, or surgical expense insurance or any combination thereof.

(2) 'Block of business' means a particular policy form or contract of individual accident and health insurance issued by an insurer.

(3) 'Closed block of business' means a block of business for which an insurer ceases to actively market, sell, and issue new contracts under a particular policy form in this State.

(4) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(5) 'Closure date' means the effective date that no new insureds will be issued coverage of the particular policy form(s).

(6) 'Policyholders' includes those applicants for the particular policy form that is being closed and for which the policy is not yet issued.

(d) This section does not apply when an insurer makes a decision to discontinue a particular policy form or contract of accident and health insurance coverage subject to Article 68 of this Chapter, cancels or nonrenews the coverage, and offers replacement coverage pursuant to G.S. 58-68-65(c)(1)."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"§ **58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(h), (i),(j).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 4. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:23 p.m. on the 20th day of September, 2005.

S.B. 1149 **Session Law 2005-413**

AN ACT TO ESTABLISH A BANKING AND SELLING PROGRAM FOR CREDITS ISSUED UNDER THE FEDERAL ENERGY POLICY ACT IN ORDER TO GENERATE FUNDS FOR THE USE OF ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES BY STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES AND TO EXTEND AND EXPAND THE CREDIT FOR INVESTMENT IN RENEWABLE ENERGY PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"§ **143-58.4. Energy credit banking and selling program.**

(a) As used in this section:

(1) 'AFV' means a hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.

(2) 'Alternative fuel' means biodiesel, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.

(3) 'B-20' means a blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.

(4) 'Department' means the Department of Administration.

(5) 'Energy Policy Act' means the federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.

(6) 'EPAct credit' means a credit issued pursuant to the Energy Policy Act.

(7) 'E-85' means a blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.

(8) 'Incremental fuel cost' means the difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.

(9) 'Incremental vehicle cost' means the difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.

(b) Establish Program. – The State Energy Office of the Department, in cooperation with State departments, institutions, and agencies, shall establish and administer an energy credit banking and selling program to allow State departments, institutions, and agencies to use moneys generated by the sale of EPAct credits to purchase alternative fuel, develop alternative fuel refueling infrastructure, and purchase AFVs for use by State departments, institutions, and agencies. Each State department, institution, and agency shall provide the State Energy Office with all vehicle fleet information necessary to determine the number of EPAct credits generated annually by the State. The State Energy Office may sell credits in any manner that is in accordance with the provisions of the Energy Policy Act.

(c) Adopt Rules. – The Secretary of Administration shall adopt rules as necessary to implement this section.

"§ **143-58.5. Alternative Fuel Revolving Fund.**

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EPAct credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases. To the extent possible, benefits from the sale of EPAct credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EPAct credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert. The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) The Fund shall be used to offset the incremental fuel cost of biodiesel fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Administration shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division no later than 1 October of each year a report on the expenditures from the Fund during the preceding fiscal year."

SECTION 2. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ **136-28.13. Participation in the energy credit banking and selling program.**

The Department of Transportation shall participate in the energy credit banking and selling program under G.S. 143-58.4 and is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4."

SECTION 3. G.S. 143-341(8)i. reads as rewritten:

"i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

2a. To participate in the energy credit banking and selling program under G.S. 143-58.4. The Division of Motor

Fleet Management of the Department of Administration is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4.

…."

SECTION 4. G.S. 105-129.15(7) reads as rewritten:

"§ **105-129.15. Definitions.**

The following definitions apply in this Article:

…

(6) Renewable biomass resources. – Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes.

(7) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical ~~generation from renewable energy crops or wood waste materials.~~generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

d. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced.

…"

SECTION 5. G.S. 105-129.16A reads as rewritten:

"§ **105-129.16A. Credit for investing in renewable energy property.**

(a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in

which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Nonresidential Property. – A ceiling of two ~~hundred fifty~~ million five hundred thousand dollars ~~($250,000)~~($2,500,000) per installation applies to renewable energy property placed in service for any purpose other than residential.

(2) Residential Property. – The following ceilings apply to renewable energy property placed in service for residential purposes:

a. One thousand four hundred dollars ($1,400) per dwelling unit for solar energy equipment for domestic water ~~heating.~~heating, including pool heating.

b. Three thousand five hundred dollars ($3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

c. Ten thousand five hundred dollars ($10,500) per installation for any other renewable energy property for residential purposes.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – This section is repealed effective for renewable energy property placed into service on or after January 1, 2011."

SECTION 6. G.S. 105-129.15A is repealed.

SECTION 7. G.S. 105-129.16 is repealed.

SECTION 8. G.S. 105-129.16C is amended by adding a new subsection to read:

"(d) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2006."

SECTION 9. Sections 1 through 3 of this act become effective January 1, 2006. Sections 4 and 5 of this act are effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:26 p.m. on the 20th day of September, 2005.

S.B. 1048 **Session Law 2005-414**

AN ACT ENACTING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Identity Theft Protection Act.

"**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act".

"**§ 75-61. Definitions.**

The following definitions apply in this Article:

(1) "Business". – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.

(2) "Consumer". – An individual.

(3) "Consumer reporting agency". – Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:

a. Credit to be used primarily for personal, family, or household purposes.

b. Employment purposes.

c. Any other purpose authorized under 15 U.S.C. § 168l(b).

(5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).

(6) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(7) "Disposal" includes the following:

a. The discarding or abandonment of records containing personal information.

b. The sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

(8) "Encryption". – The use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(10) "Personal information". – A person's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b). Personal information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address, and telephone number, and does not include information made lawfully available to the general public from federal, state, or local government records.

(11) "Proper identification". – Information generally deemed sufficient to identify a person. If a person is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.

(12) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(13) "Redaction". – The rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number is accessible as part of the data.

(14) "Security breach". – An incident of unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.

(15) "Security freeze". – Notice placed in a credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

"§ **75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's social security number.

(2) Intentionally print or imbed an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed.

(6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's social security number to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's social security number.

(b) Subsection (a) of this section shall not apply in the following instances:

(1) When a social security number is included in an application or in documents related to an enrollment process, or to establish, amend, or terminate an account, contract, or policy; or to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) To the collection, use, or release of a social security number for internal verification or administrative purposes.

(3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.

(4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit.

(5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.

(6) To a business providing the social security number to a federal, state, or local government entity, including a law enforcement agency, court, or their agents or assigns.

(7) To a social security number that has been redacted.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented.

(d) A violation of this section is a violation of G.S. 75-1.1.

"**§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request in writing by certified mail to a consumer reporting agency. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(3) The proper information regarding the time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

(1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(3) A consumer reporting agency that does all of the following:

a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.

b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars ($10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report, except that a consumer reporting agency may not charge any fee to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"North Carolina Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within five business days. When you place a security freeze on your credit report, within 10 business days, you will be provided a personal identification number or a password to use when you want to remove or lift temporarily the security freeze.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a freeze or authorize temporary access for a specific period of time by contacting the consumer reporting agency and providing all of the following:

(1) Your personal identification number or password,

(2) Proper identification to verify your identity, and

(3) Proper information regarding the period of time you want your report available to users of the credit report.

A consumer reporting agency that receives a request from you to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request. A consumer reporting agency may charge you up to ten dollars ($10.00) for each time you freeze, remove the freeze, or temporarily lift the freeze for a period of time, except a consumer reporting agency may not charge any amount to a victim of identify theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(q) A violation of this section is a violation of G.S. 75-1.1.

"§ **75-64. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include:

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of

papers containing personal information so that information cannot be practicably read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed.

(3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business may, after due diligence, enter into a written contract with, and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

(1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.

(2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.

(3) Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any of the following:

(1) Any bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm Leach Bliley Act, 15 U.S.C. § 6801, et seq., as amended.

(2) Any health insurer or health care facility that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(3) Any consumer reporting agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed against a business because of the acts or omissions of its nonmanagerial employees shall not be trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision, or monitoring of those employees. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

"§ **75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses

personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include a description of the following:

(1) The incident in general terms.

(2) The type of personal information that was subject to the unauthorized access and acquisition.

(3) The general acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number that the person may call for further information and assistance, if one exists.

(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.

(3) Telephonic notice provided that contact is made directly with the affected persons.

(4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:

a. E-mail notice when the business has an electronic mail address for the subject persons.

b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.

c. Notification to major statewide media.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned."

SECTION 2. G.S. 14-113.21 reads as rewritten:

"§ **14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in ~~any county in which~~ the county where the victim resides, where the perpetrator resides, where any part of the financial identity fraud took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county."

SECTION 3. Article 19C of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-113.21A. Investigation of offenses.**

(a) A person who has learned or reasonably suspects that the person has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over the person's actual residence. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency may take the complaint, issue an incident report, and provide the complainant with a copy of the report and may refer the report to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed or report issued under this section is not required to be counted as an open case for purposes of compiling open case statistics."

SECTION 4. Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.8. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information", as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall

not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(d) No person preparing or filing a document to be recorded or filed in the official records by the register of deeds or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates

this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds. The register of deeds may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Web site available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(g) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public

records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of court."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Miscellaneous.

"§ **120-61. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.**

Agencies of the State shall evaluate and report annually by January 1 to the General Assembly about the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose."

SECTION 6. G.S. 14-113.20 reads as rewritten:

"§ **14-113.20. ~~Financial identity fraud.~~Identity theft.**

(a) A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term "identifying information" as used in this Article includes the following:

(1) Social security or employer taxpayer identification numbers.
(2) Drivers ~~license~~ license, State identification card, or passport numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
(8) Electronic identification ~~numbers.~~numbers, electronic mail names or addresses, Internet account numbers, or Internet identification names.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.
(11) Biometric data.
(12) Fingerprints.
(13) Passwords.
(14) Parent's legal surname prior to marriage.

(c) It shall not be a violation under this Article for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

SECTION 7. The Revisor of Statutes shall make the following technical and conforming corrections:

(1) Rename Article 19C of Chapter 14 of the General Statutes from "Financial Identity Fraud" to "Identity Theft".
(2) Replace the phrase "financial identity fraud" with the phrase "identity theft" wherever the terms appear throughout Article 19C of Chapter 14 of the General Statutes.

SECTION 8. G.S. 15A-147(a) reads as rewritten:

"§ **15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity ~~fraud.~~theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person ~~to commit an infraction or crime~~ and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction."

SECTION 9. G.S. 1-539.2C reads as rewritten:

"§ **1-539.2C. Damages for identity ~~fraud.~~theft.**

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil damages. Damages may be in an amount of up to five thousand dollars ($5,000) but no less than five hundred dollars ($500.00) for each incident, or three times the amount of actual damages, whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party."

SECTION 10. The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. G.S. 75-62(a)(2), (3), (4), and (5), as enacted in Section 1 of this act, become effective October 1, 2006. G.S. 132-1.8(b)(6), (7), (8), and (9), as enacted in Section 4 of this act, become effective July 1, 2007. Section 6 of this act becomes effective December 1, 2005, and applies to offenses committed, and to causes of action arising, on or after that date. The remainder of this act becomes effective December 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 10:50 a.m. on the 21st day of September, 2005.

H.B. 636 **Session Law 2005-415**

AN ACT TO REQUIRE DISCLOSURE OF MARKUPS OF ANATOMIC PATHOLOGY SERVICES BY PHYSICIANS, HOSPITALS, DENTISTS, AND PODIATRISTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 40.

"Pathology Services Billing.

"§ **90-681. Billing of anatomic pathology services.**

(a) It shall be unlawful for any person licensed to practice medicine, podiatry, or dentistry in this State to bill a patient, entity, or person for anatomic pathology services in an amount in excess of the amount charged by the clinical laboratory for performing the service unless the licensed practitioner discloses conspicuously on the itemized bill or statement, or in writing by a separate itemized disclosure statement:

(1) The amounts charged by the laboratory for the anatomic pathology service;

(2) Any other charge that has been included in the bill; and

(3) The name of the licensed practitioner performing or supervising the anatomic pathology service.

The disclosure required under this subsection shall be printed in a 10-point or higher font size.

(b) It shall be unlawful for any hospital licensed in this State to bill a patient, entity, or person for anatomic pathology services in an amount in excess of the amount charged by the clinical laboratory for performing the service unless the hospital

discloses conspicuously on the itemized bill or statement, or in writing by a separate itemized disclosure statement:

(1) The amounts charged by the laboratory for the professional anatomic pathology services;

(2) Any other charge that has been included in the bill; and

(3) The name of the licensed practitioner performing or supervising the anatomic pathology service.

The disclosure required under this subsection shall be printed in a 10-point or higher font size.

(c) A bill for anatomic pathology services submitted to a patient, entity, or person for payment shall disclose the name and address of the laboratory performing the professional component of the service.

(d) The requirements of subsections (a) and (b) of this section shall not apply to:

(1) A licensed practitioner performing or supervising anatomic pathology services, or

(2) A hospital or physician group practice where a physician employee or physician under contract to a hospital or a physician group practice is providing or supervising anatomic pathology services and is compensated by the hospital or physician group practice for the services.

(e) As used in this section, the term "anatomic pathology services" means:

(1) Histopathology or surgical pathology meaning the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician;

(2) Cytopathology meaning the examination of cells from fluids, aspirates, washings, brushings, or smears, including the Pap test examination performed by a physician or under the supervision of a physician;

(3) Hematology meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician, and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by a pathologist;

(4) Subcellular pathology and molecular pathology; and

(5) Blood-banking services performed by pathologists.

(f) Nothing in this section shall be construed to require the disclosure of the terms or conditions of a contract for the provision of anatomic pathology services between a managed care organization and a hospital or between a managed care organization and a physician's practice.

(g) The requirements of subsections (a) and (b) of this section shall not apply to a referring laboratory providing anatomic pathology services for services performed by that laboratory in instances where one or more samples must be sent for a second medical opinion on a specimen.

(h) Nothing in this section shall be construed as a prohibition on a physician requesting the anatomic pathology services of more than one clinical laboratory for a second medical opinion on a specimen.

(i) Each intentional failure to disclose in violation of subsections (a), (b), or (c) of this section is a separate Class 3 misdemeanor offense punishable by a fine of two hundred fifty dollars ($250.00).

(j) The respective State licensing boards having jurisdiction over practitioners subject to this section may revoke, suspend, or deny renewal of the license of a practitioner who violates this section. Each State licensing board having jurisdiction may take disciplinary action on a finding by the board of intentional violation or an ongoing pattern of violations in the absence of a misdemeanor conviction.

(k) Not later than six months from the effective date of this section, the respective State licensing boards having jurisdiction, and the Division of Facility Services, shall communicate the requirements of this section to all licensed practitioners and licensed facilities subject to this section."

SECTION 1.1. If Senate Bill 1059, 2005 Regular Session becomes law, then Article 40 of Chapter 90 of the General Statutes and G.S. 90-681 both as enacted by this act are recodified as Article 41 of Chapter 90 of the General Statutes and G.S. 90-701 respectively.

SECTION 2. G.S. 90-18(a) reads as rewritten:

"(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 ~~misdemeanor.~~misdemeanor, except that if the person so practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine or surgery in this State, the person shall be guilty of a Class I felony."

SECTION 3. The State licensing boards subject to G.S. 90-681, as enacted by this act, and the Division of Facility Services of the Department of Health and Human Services shall report to the 2006 Regular Session of the 2005 General Assembly upon its convening. The report shall indicate efforts made to apprise licensed practitioners and to evaluate licensed practitioners' and licensed health care facilities' compliance with the requirements of G.S. 90-681, as enacted by this act.

SECTION 4. This act becomes effective December 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:09 p.m. on the 22nd day of September, 2005.

H.B. 1517 **Session Law 2005-416**

AN ACT TO CLARIFY THE DEFINITION OF CHILD CARE AS RELATED TO DROP-IN OR SHORT-TERM CARE UNDER THE LAWS PERTAINING TO CHILD CARE FACILITIES AND TO MAKE IT A CRIMINAL OFFENSE FOR A BABY SITTING SERVICE TO BE OFFERED OR PROVIDED BY A SEX OFFENDER OR TO BE LOCATED IN THE HOME OF A SEX OFFENDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-86(2) reads as rewritten:

"§ **110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

…

(2) Child care. – A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. Child care does not include the following:

a. Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care;

b. Recreational programs operated for less than four consecutive months in a year;

c. Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;

d. Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;

d1. Drop-in or short-term care provided by an employer for its part-time employees where (i) the child is provided care not to exceed two and one-half hours during that day, (ii) the parents are on the premises, and (iii) there are no more than 25 children in any one group in any one room;

e. Public schools;

f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site;

g. Bible schools conducted during vacation periods;

h. Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;

i. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and

j. Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component.

…."

SECTION 2. G.S. 110-99(b) reads as rewritten:

"(b) A person who provides only drop-in or short-term child care as described in ~~G.S. 110-86(2)(d)~~ G.S. 110-86(2)d. and G.S. 110-86(2)d1., excluding drop-in or short-term child care provided in churches, shall ~~notify~~ register with the Department that the person is providing only drop-in or short-term child care. Any person providing only

drop-in or short-term child care as described in ~~G.S. 110-86(2)(d)~~ G.S. 110-86(2)d. and G.S. 110-86(2)d1., excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department."

SECTION 3. The Director of the Division of Child Development shall report to the General Assembly no later than May 1, 2006, the number of drop-in and short-term facilities that have registered under G.S. 110-99(b), as enacted by this act.

SECTION 3.1. The Director of the Division of Child Development, in coordination with other child care stakeholder organizations and advocates, shall study current policies, practices, and laws related to drop-in and short-term care and baby sitting services and shall make recommendations to ensure the health and safety of children who utilize this type of care. The Division shall report its findings and recommendations to the General Assembly by April 30, 2006.

SECTION 4. Article 39 of Chapter 14 is amended by adding a new section to read:

"**§ 14-321.1. Prohibit baby sitting service by sex offender or in the home of a sex offender.**

(a) For purposes of this section the term "baby sitting service" means providing, for profit, supervision or care for a child under the age of 13 years who is unrelated to the provider by blood, marriage, or adoption, for more than two hours per day while the child's parents or guardian are not on the premises.

(b) Notwithstanding any other provision of law, no person who is an adult may provide or offer to provide a baby sitting service in any of the following circumstances:

(1) The baby sitting service is offered in a home and a resident of the home is a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes.

(2) A provider of care for the baby sitting service is a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes.

(c) A violation of this section that is a first offense is a Class 1 misdemeanor. A violation of this section that is a second or subsequent offense is a Class H felony."

SECTION 5. Section 4 of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:46 p.m. on the 22nd day of September, 2005.

S.B. 443 **Session Law 2005-417**

AN ACT RELATING TO PUBLIC HOSPITAL INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-39(g) reads as rewritten:

"(g) A public hospital may deposit or invest at interest all or part of its cash balance pursuant to ~~G.S. 159-30.~~G.S. 159-30 and may deposit any funds held in

reserves or sinking funds, or any funds not required for immediate disbursement, with the State Treasurer for investment pursuant to G.S. 147-69.2."

SECTION 2. G.S. 147-69.2 reads as rewritten:

"§ **147-69.2. Investments authorized for special funds held by State Treasurer.**

(a) This section applies to funds held by the State Treasurer to the credit ~~of:~~of each of the following:

(1) The Teachers' and State Employees' Retirement ~~System,~~System.
(2) The Consolidated Judicial Retirement ~~System,~~System.
(3) The Teachers' and State Employees' Hospital and Medical Insurance ~~Plan,~~Plan.
(4) The General Assembly Medical and Hospital Care ~~Plan,~~Plan.
(5) The Disability Salary Continuation ~~Plan,~~Plan.
(6) The Firemen's and Rescue Workers' Pension ~~Fund,~~Fund.
(7) The Local Governmental Employees' Retirement ~~System,~~System.
(8) The Legislative Retirement ~~System,~~System.
(9) The Escheat ~~Fund,~~Fund.
(10) The Legislative Retirement ~~Fund,~~Fund.
(11) The State Education Assistance ~~Authority,~~Authority.
(12) The State Property Fire Insurance ~~Fund,~~Fund.
(13) The Stock Workers' Compensation ~~Fund,~~Fund.
(14) The Mutual Workers' Compensation ~~Fund,~~Fund.
(15) The Public School Insurance ~~Fund,~~Fund.
(16) The Liability Insurance Trust ~~Fund,~~Fund.
(16a) The University of North Carolina Hospitals at Chapel Hill funds, except appropriated funds, deposited with the State Treasurer pursuant to G.S. 116-37.2.
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to ~~G.S. 116-36.1,~~G.S. 116-36.1.
(17a) North Carolina Veterans Home Trust ~~Fund,~~Fund.
(17b) North Carolina National Guard Pension ~~Fund,~~Fund.
(17c) Retiree Health Premium Reserve ~~Account, and~~Account.
(17d) The Election Fund.
(17e) Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).
(2) General obligations of other states of the United States.
(3) General obligations of cities, counties and special districts in North Carolina.
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States if the obligations bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a

rating below the four highest by any nationally recognized rating service which rates the particular security.

(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular securities.

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) limited partnerships, whether described as limited liability partnerships or limited liability companies; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, ~~and~~ the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States provided the investments meet the conditions of this subdivision.

The investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total assets of at least fifty million dollars ($50,000,000).

The assets authorized under this subdivision can be invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.

b. The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been at least equal to the amount of the dividends paid.

c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company if the primary purpose of the partnership or limited liability company is to invest in public or private debt, public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22),

not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than July 1, 2005. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

(b1) With respect to investments authorized by subsections (b)(8) and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The two public members must have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(b2) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17e) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by a hospital shall remain the funds of that hospital, and interest or other investment income earned thereon shall be prorated and credited to the contributing hospital on the basis of the amounts thereof contributed, figured according to sound accounting principles.

(b3) The State Treasurer may invest funds deposited pursuant to subdivision (a)(16a) of this section in any of the investments authorized under subdivisions (1) through (6) and subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars ($100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by the University of North Carolina Hospitals at Chapel Hill shall remain the funds of the University of North Carolina Hospitals at Chapel Hill, and interest or other investment income earned thereon shall be prorated and credited to the University of North Carolina Hospitals at Chapel Hill on the basis of the amounts thereof contributed, figured according to sound accounting principles.

(c) Repealed by Session Laws 1995, c. 501, s. 2."

SECTION 3. G.S. 116-37(e) reads as rewritten:

"(e) Finances. – The University of North Carolina Health Care System shall be subject to the provisions of the Executive Budget ~~Act.~~ Act, except for trust funds as

provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to G.S. 147-69.2(b3). General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to a special fund operating code as receipts."

SECTION 4. Article 1, Part 3 of Chapter 116 of the General Statutes, is amended by adding a new section to read:

"**§ 116-37.2. Regulation of University of North Carolina Hospitals at Chapel Hill Funds.**

(a) As used in this section, "funds" means:

(1) Moneys, or the proceeds of other forms of property, received by the University of North Carolina Hospitals at Chapel Hill as gifts, devises, or bequests.

(2) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.

(3) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the University of North Carolina Hospitals at Chapel Hill undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training, or public service programs.

(4) Moneys received from or for the operation by the University of North Carolina Hospitals at Chapel Hill of any of its self-supporting auxiliary enterprises, including the Liability Insurance Trust Fund.

(5) Moneys received by the University of North Carolina Hospitals at Chapel Hill in respect to fees and other payments for services it renders in its hospital and/or clinical operations.

(6) The net proceeds from the disposition effected pursuant to Article 7 of Chapter 146 of the General Statutes of any interest in real property owned by or under the supervision and control of the University of North Carolina Hospitals at Chapel Hill if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection, except the net proceeds from the disposition of an interest in real property first acquired by the University of North Hospitals at Chapel Hill through expenditure of moneys received as a grant from a State agency.

(b) The Board of Directors of the University of North Carolina Health Care System, as established in G.S. 116-37(b), is responsible for the custody and management of the funds of the University of North Carolina Hospitals at Chapel Hill. The Board shall adopt uniform policies and procedures applicable to the administration of these funds, which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the Chief Executive Officer of the University of North Carolina Health Care System to the President of the University of North Carolina Hospitals at Chapel Hill, when such delegation is necessary or prudent to enable the University of North Carolina Hospitals at Chapel Hill to function in a proper and expeditious manner.

(c) Funds under this section shall be deposited with the State Treasurer who shall hold them in trust in the name of the University of North Carolina Hospitals at Chapel Hill.

(d) Funds deposited with the State Treasurer in an account pursuant to this section, and investment earnings thereon, are available for expenditure by the University of North Carolina Hospitals at Chapel Hill without further authorization from the General Assembly.

(e) Funds under this section are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the Executive Budget Act except for capital improvements projects, which shall be authorized and executed in accordance with G.S. 143-18.1.

(f) The University of North Carolina Hospitals at Chapel Hill shall submit such reports or other information concerning its fund accounts under this section as may be required by the Director of the Budget.

(g) Funds under this section, or the investment income therefrom, shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the University of North Carolina Hospitals at Chapel Hill may improve and increase their functions, may enlarge their areas of service, and may become more useful to a greater number of people.

(h) Notwithstanding the provisions of subsection (c) of this section, the Board may designate as the official depository of the funds identified in subdivisions (a)(4), (a)(5), and (a)(6) of this section one or more banks or trust companies in this State for any investments authorized by G.S. 147-69.2(b3)."

SECTION 5. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:48 p.m. on the 22nd day of September, 2005.

S.B. 518 **Session Law 2005-418**

AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND COUNTY PLANNING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-363 reads as rewritten:

"§ **160A-363. Supplemental powers.**

(a) A city or its designated planning board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance."

SECTION 1.(b) G.S. 153A-322 reads as rewritten:

"§ **153A-322. Supplemental powers.**

(a) A county or its designated planning board may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

(b) A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning ~~board~~ agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning ~~agency~~ board that it may create or designate pursuant to this Article.

(d) A county may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a county may

apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance."

SECTION 2.(a) G.S. 160A-371 reads as rewritten:

"§ **160A-371. Subdivision regulation.**

A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval."

SECTION 2.(b) G.S. 153A-330 reads as rewritten:

"§ **153A-330. Subdivision regulation.**

A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval."

SECTION 3.(a) G.S. 160A-373 reads as rewritten:

"§ **160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final ~~approval of each individual subdivision plat is to be given by~~decisions on preliminary plats and final plats are to be made by:

(1) The city council,

(2) The city council on recommendation of a ~~planning agency,~~ designated body, or

(3) A designated planning board, technical review committee, or other designated body or staff person.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review

Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section."

SECTION 3.(b) G.S. 153A-332 reads as rewritten:

"§ **153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;

(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final ~~approval of each individual subdivision plat is to be given by:~~decisions on preliminary plats and final plats are to be made by:

(1) The board of commissioners,

(2) The board of commissioners on recommendation of a ~~planning agency,~~ designated body, or

(3) A designated planning ~~agency.~~board, technical review committee, or other designated body or staff person.

From the effective date of a subdivision ordinance that is adopted by the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section."

SECTION 4.(a) G.S. 160A-384 reads as rewritten:

"§ **160A-384. Method of procedure.**

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement~~ notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 4.(b) G.S. 153A-343 reads as rewritten:

"§ **153A-343. Method of procedure.**

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public~~

~~hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 153A-323. The advertisement~~ notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~

~~(c)~~ ~~The provisions of this section shall not be applicable to any zoning map adoption that initially zones property added to the territorial coverage of the ordinance.~~

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 5. G.S. 160A-385 reads as rewritten:

"§ **160A-385. Changes.**

(a) Qualified Protests.

(1) Zoning ~~regulations and restrictions and zone boundaries~~ ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against ~~such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment~~ a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

(2) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property

line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

(3) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use ~~district or~~ district, (ii) conditional use ~~district~~ district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special ~~use or~~ use district, conditional use ~~district.~~district, or conditional district.

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1."

SECTION 6. G.S. 160A-386 reads as rewritten:

"§ **160A-386. Protest petition; form; requirements; time for filing.**

No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement."

SECTION 7.(a) G.S. 160A-387 reads as rewritten:

"§ **160A-387. Planning ~~agency;~~ board; zoning plan; certification to city council.**

In order to initially exercise the powers conferred by this Part, a city council shall create or designate a planning ~~agency~~ board under the provisions of this Article or of a special act of the General Assembly. The planning ~~agency~~ board shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~ make a written recommendation

regarding adoption of the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a ~~certified~~ recommendation regarding ordinance from the planning ~~agency.~~ board. Following its required public hearing, the city council may refer the ordinance back to the planning ~~agency~~ board for any further recommendations that the ~~agency~~ board may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board."

SECTION 7.(b) G.S. 153A-344 reads as rewritten:

"§ **153A-344. Planning ~~agency;~~ board; zoning plan; certification to board of ~~commissioners; amendments.~~commissioners.**

(a) To initially exercise the powers conferred by this Part, a county shall create or designate a planning ~~agency~~ board under the provisions of this Article or of a local act. The planning ~~agency~~ board shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~ make a written recommendation regarding adoption of the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a ~~certified~~ recommendation regarding the ordinance from the planning ~~agency.~~ board. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning ~~agency~~ board for any further recommendations that the ~~agency~~ board may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

~~Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation.~~ Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning ~~agency.~~ board.

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established

pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1."

SECTION 8.(a) G.S. 160A-388 reads as rewritten:

"§ **160A-388. Board of adjustment.**

(a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular ~~member.~~ member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving ~~in the absence~~ on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. A city may designate a planning ~~agency~~ board or governing board to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) ~~The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part.~~ A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations

~~and~~ as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the ~~power, in passing upon appeals,~~ power to vary or modify any of the regulations or provisions of the ordinance ~~relating to the use, construction or alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue

these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 8.(b) G.S. 153A-345 reads as rewritten:

"§ **153A-345. Board of adjustment.**

(a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence or temporary disqualification of any regular ~~member.~~ member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving ~~in the absence~~ on behalf of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning ~~agency~~ board or the board of county commissioners to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) ~~The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part.~~ A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the

parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations ~~and~~ as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment ~~may, in passing upon appeals,~~ shall have the power to vary or modify any regulation or provision of the ordinance ~~relating to the use, construction, or alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman may in his official capacity administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 9. G.S. 136-44.50(d) reads as rewritten:

"(d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a transportation corridor official map or amendments to a transportation corridor official map. When a city prepares a transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the ~~two-year~~ one-year period provided by this section unless it establishes a substantially different corridor in a primarily new location."

SECTION 10. G.S. 160A-360(a1) reads as rewritten:

"(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning ~~agency~~ board and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud."

SECTION 11. G.S. 160A-362 reads as rewritten:

"§ **160A-362. Extraterritorial representation.**

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning ~~agency or agencies~~ board provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation

shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the planning ~~agency~~ board and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the planning ~~agency~~ board or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning ~~agency~~ board or board of adjustment. Membership of joint municipal county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning ~~agency~~ board and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the planning ~~agency~~ board or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the ~~agency~~ board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area."

SECTION 12. G.S. 160A-400.7 reads as rewritten:

"§ **160A-400.7. Historic Preservation Commission.**

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this

Part to deal only with historic districts or landmarks respectively, (ii) a planning ~~agency~~ board established pursuant to this Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning ~~agency~~ board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 13. G.S. 160A-400.14(a) reads as rewritten:

"(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

If the commission or planning ~~agency~~ board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission or planning ~~agency~~ board for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first."

SECTION 14. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

SECTION 15. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:51 p.m. on the 22nd day of September, 2005.

H.B. 1310 **Session Law 2005-419**

AN ACT TO PERMIT STUDENTS TO USE THEIR SAT SCORES OR PRAXIS I SCORES TO QUALIFY FOR ADMISSION TO TEACHER EDUCATION PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-296 is amended by adding a new subsection to read:

"(b2) An undergraduate student seeking a degree in teacher education must attain passing scores on a preprofessional skills test prior to admission to an approved teacher education program in a North Carolina college or university. The State Board of Education shall permit students to fulfill this requirement by achieving the prescribed minimum scores set by the State Board of Education for the Praxis I tests or by achieving the appropriate required score, as determined by the State Board of Education, on the verbal and mathematics portions of the SAT. The minimum combined verbal and mathematics score set by the State Board of Education shall be between 900 and 1,200."

SECTION 2. This act is effective when it becomes law and applies to students seeking admission to a teacher education program beginning with the 2006-2007 academic year.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:53 p.m. on the 22nd day of September, 2005.

S.B. 911 **Session Law 2005-420**

AN ACT TO PROVIDE FOR THE DISTRIBUTION OF UNPAID RESIDUALS IN CLASS ACTION LITIGATION.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 26B.

"Distribution of Unpaid Residuals in Class Action Litigation.

"**§ 1-267.10. Distribution of unpaid residuals in class action litigation.**

(a) It is the intent of the General Assembly to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all citizens of this State. The General Assembly finds that the use of funds collected by the State courts pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or

settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise consistent with its obligations under Rule 23 of the Rules of Civil Procedure, shall direct the defendant to pay the sum of the unpaid residue, to be divided and credited equally, to the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents.

SECTION 3. This act becomes effective October 1, 2005, and applies to causes of action that arise on or after that date.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:54 p.m. on the 22nd day of September, 2005.

H.B. 1207 **Session Law 2005-421**

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE, TO MAKE TECHNICAL CHANGES TO VARIOUS TERMS, AND TO AMEND THE APPOINTMENT OF THE MEMBERSHIP OF THE EDENTON HISTORICAL COMMISSION.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate; and

Whereas, the Speaker of the House of Representatives and President Pro Tempore of the Senate have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SPEAKER'S RECOMMENDATIONS

SECTION 1.1. Tracy Sturdivant of Wake County and Nan Cameron of New Hanover County are appointed to the Acupuncture Licensing Board for terms expiring on June 30, 2008.

SECTION 1.2. Winston T. Morgan of Wake County is appointed to the North Carolina Appraisal Board for a term expiring on June 30, 2008.

SECTION 1.3. Jason J. Ramirez of Wake County, Dr. John Mangum of Lee County, and Kevin D. Allran of Mecklenburg County are appointed to the North Carolina Board of Athletic Trainer Examiners for terms expiring on July 31, 2008.

SECTION 1.4. Swayn G. Hamlet of Cumberland County is appointed to the North Carolina Bridge Authority for a term expiring on June 30, 2009.

SECTION 1.5. David Fountain of Wake County is appointed to the North Carolina Capital Facilities Finance Agency Board of Directors for a term expiring on March 1, 2009.

SECTION 1.7. Ray N. Rouse, III, of Wayne County and Judi Grainger of Wake County are appointed to the Centennial Authority for terms expiring on June 30, 2009.

SECTION 1.8. Mary S. Garrett of Craven County and Dawn Wallace of Moore County are appointed to the Child Care Commission for terms expiring on June 30, 2007.

SECTION 1.9. Dennis L. Hall, Sr., of Cabarrus County is appointed to the State Board of Chiropractic Examiners for a term expiring on June 30, 2007.

SECTION 1.10. John Peter Rascoe, III, of Chowan County and Robert D. Howard of Columbus County are appointed to the Clean Water Management Trust Fund Board of Trustees for terms expiring on June 30, 2009. The Honorable Charles Johnson is appointed to the Clean Water Management Trust Fund Board of Trustees for a term expiring on July 1, 2006, to fill the unexpired term of the Honorable Ronnie Smith.

SECTION 1.11. James Festerman of Rockingham County, Gary Mason of Randolph County, Vernon Julius Bryant of Halifax County, and Kevin Wallace of Wake County are appointed to the North Carolina Criminal Justice Education and Training Standards Commission for terms expiring on June 30, 2007.

SECTION 1.12. Leslie C. Stanfield of New Hanover County is appointed to the Criminal Justice Information Network Governing Board for a term expiring on June 30, 2009.

SECTION 1.13. Janet A. Roberts of Beaufort County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring on June 30, 2008.

SECTION 1.14. Rebecca Brownlee of Wake County is appointed to the Disciplinary Hearing Committee of the North Carolina State Bar for a term expiring on June 30, 2006, to fill the unexpired term of the Honorable Betty Ann Knudsen. Michael Houser of Wake County is appointed to the Disciplinary Hearing Committee of the North Carolina State Bar for a term expiring on June 30, 2006, to fill the unexpired term of Victor Parks.

SECTION 1.15. The Honorable Michael Sabiston of Montgomery County and Maria Pinto of Pitt County are appointed to the Domestic Violence Commission for terms beginning on September 1, 2005, and expiring on August 31, 2007.

SECTION 1.16. Representative Marvin W. Lucas of Cumberland County is appointed to the Education Commission of the States for a term expiring on June 30, 2006.

SECTION 1.17. Herbert Crenshaw of Wake County is appointed to the e-NC Authority Commission for a term expiring on December 31, 2006.

SECTION 1.18. John S. Curry of Buncombe County and Steven D. Weber of Mecklenburg County are appointed to the Environmental Management Commission for terms expiring on June 30, 2007.

SECTION 1.19. George S. Parrott of Wake County is appointed to the North Carolina Board of Funeral Service for a term expiring on June 30, 2008.

SECTION 1.20. R. Gene Braswell of Wayne County is appointed to the Board of Directors of the North Carolina Global TransPark Authority for a term expiring on June 30, 2009.

SECTION 1.21. Gerald W. Canipe of Cumberland County is appointed to the North Carolina Home Inspector Licensure Board for a term expiring on July 1, 2009.

SECTION 1.22. William C. Lackey, Jr., of Mecklenburg County, Mark McGoldrick of Mecklenburg County, Matthew B. Harrell of Surry County, and William Fitzgerald of Scotland County are appointed to the North Carolina Housing Finance Agency for terms expiring on June 30, 2007.

SECTION 1.23. Debbie Batts of Wilson County, Robert P. Taylor of Cumberland County, and Tzena Keyes of Buncombe County are appointed to the North

Carolina Interpreter and Transliterator Licensing Board for terms expiring on June 30, 2008.

SECTION 1.24. Representative Arthur Williams of Beaufort County, Karen Anne McCall of Durham County, and the Honorable Norman A. Mitchell, Sr., of Mecklenburg County are appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for terms expiring on June 30, 2007.

SECTION 1.25. Cecil Luther Dills of Jackson County is appointed to the License to Give Trust Fund Commission for a term expiring on December 31, 2006, to fill the unexpired term of K. Dean Shatley.

SECTION 1.26. David Huskins of McDowell County is appointed to the Local Government Commission for a term expiring on June 30, 2009.

SECTION 1.27. Dennis N. Green of Mecklenburg County is appointed to the North Carolina Locksmith Licensing Board for a term expiring on December 31, 2008.

SECTION 1.28. W. Ann Forbes of Wake County is appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for a term expiring on June 30, 2008.

SECTION 1.29. Joyce Omer of Moore County is appointed to the Board of Trustees of the North Carolina Museum of Art for a term expiring on June 30, 2007.

SECTION 1.30. Alan Briggs of Wake County is appointed to the Natural Heritage Trust Fund Board of Trustees for a term expiring on December 31, 2011.

SECTION 1.31. John E. Schrote of Currituck County, Joe Landino of Tyrrell County, and William Askew, Jr., of Northampton County are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2007.

SECTION 1.32. Gwendolyn F. Stewart of Forsyth County and Stacy Flannery of Johnston County are appointed to the North Carolina Center for Nursing Board of Directors for terms expiring on June 30, 2008.

SECTION 1.33. Patricia Gayle Floyd of Beaufort County and Dr. Evelyn Pet Pruden of Wilson County are appointed to the North Carolina Nursing Scholars Commission for terms expiring on June 30, 2009.

SECTION 1.34. John Ronald Kincaid of Montgomery County is appointed to the North Carolina Parks and Recreation Authority for a term expiring on July 1, 2008.

SECTION 1.35. Sue Russell of Orange County, Robert Shinn of Cabarrus County, and James R. Horton of Martin County are appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., for terms beginning on January 1, 2006, and expiring on December 31, 2008.

SECTION 1.36. Jeffrey Cooper of Martin County, Shirley Diffee Lowder of Stanly County, Richard G. Greb of Wake County, Laura Thompson-Quinn of Wake County, Denise Little of Catawba County, Carl Dobson of Buncombe County, and the Honorable Ruth Cook of Wake County are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring on June 30, 2007.

SECTION 1.37. Lloyd Williams, Jr., of Cleveland County, Thomas S. Blue of Moore County, Bennie Gupton of Franklin County, Ralph Heath of Wake County, and Waheedul Haq of Wake County are appointed to the Petroleum Underground Storage Tank Funds Council for terms expiring on June 30, 2007.

SECTION 1.38. James C. Stevens of Carteret County is appointed to the Private Protective Services Board for a term expiring on June 30, 2008.

SECTION 1.39. The Honorable Wade F. Wilmoth of Watauga County is appointed to the Property Tax Commission for a term expiring on June 30, 2007.

SECTION 1.40. Gene Hoots of Mecklenburg County is appointed to the Board of Trustees of The North Carolina Public Employee Deferred Compensation Plan for a term expiring on June 30, 2007.

SECTION 1.41. The Honorable James H. Edwards of Caldwell County is appointed to the North Carolina Agency for Public Telecommunications for a term expiring on June 30, 2007.

SECTION 1.42. John L. Atkins, III, of Durham County is appointed to the North Carolina Railroad Company Board of Directors for a term expiring on June 30, 2009.

SECTION 1.43. Melvin "Skip" Alston of Guilford County is appointed to the North Carolina Real Estate Commission for a term expiring on July 31, 2008.

SECTION 1.44. Thomas E. Brooks of Wake County, Walter E. Daniels of Durham County, and Rolf Blizzard of Wake County are appointed to the Roanoke Island Commission for terms expiring on September 30, 2007.

SECTION 1.45. The Honorable John L. Tart of Wayne County, Jennie Jarrell Hayman of Wake County, and Dana Simpson of Wake County are appointed to the Rules Review Commission for terms expiring on June 30, 2007.

SECTION 1.46. Gilbert Baccus, Jr., of Perquimans County is appointed to the Seafood Industrial Park Authority for a term expiring on June 30, 2007.

SECTION 1.47. Jameson Wells of Mecklenburg County is appointed to the North Carolina Board of Science and Technology for a term expiring on June 30, 2007.

SECTION 1.48. Sheriff Stephen Bunn of Bladen County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring on June 30, 2007.

SECTION 1.49. Anthony G. Copeland of Montgomery County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring on June 30, 2008.

SECTION 1.50. Kermit D. Williamson of Sampson County, James L. F. Smith of Pender County, and Roger F. Hall of Robeson County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2009.

SECTION 1.51. John Marvin Thompson of Wake County is appointed to the State Building Commission for a term expiring on June 30, 2008.

SECTION 1.52. K. Dean Shatley of Buncombe County is appointed to the State Personnel Commission for a term expiring on June 30, 2010, to fill the unexpired term of James B. Bryan, III.

SECTION 1.53. Jesse Smith Capel, Jr., of Montgomery County is appointed to the North Carolina State Ports Authority for a term expiring on June 30, 2007.

SECTION 1.54. Tony H. Jarrett of Guilford County, James H. Pou Bailey, Jr., of Carteret County, Kenneth A. Johnson of Pender County, and Trip Smithdeal of Davie County are appointed to the Commission on State Property for terms expiring on August 14, 2007.

SECTION 1.55. Harriett McDowell of Columbus County and Tricia A. Cotham of Mecklenburg County are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring on June 30, 2007. Linda Hardison of Moore County and Tina Beacham of Pitt County are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring on June 30, 2009.

SECTION 1.56. Trudy Mitchell of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term expiring on June 30, 2007.

SECTION 1.57. Edward S. Goode, Jr., of Mecklenburg County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring on June 30, 2007.

SECTION 1.58. The Honorable Cheryle G. Cheek of Brunswick County and Sheryn S. Northey of Polk County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for terms expiring on June 30, 2009.

SECTION 1.59. Stephanie Lemon of Guilford County is appointed to the North Carolina Teaching Fellows Commission for a term expiring on June 30, 2009.

SECTION 1.60. Janet Baldwin of Wake County is appointed to the State Board of Therapeutic Recreation Certification for a term expiring on June 30, 2008.

SECTION 1.61. James Treadaway, Jr., of Catawba County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring on June 30, 2007.

SECTION 1.62. Representative E. Nelson Cole of Rockingham County is appointed to the Virginia-North Carolina Interstate High-Speed Rail Compact to serve at the pleasure of the appointing authority.

SECTION 1.63. J. Craig Madison of Buncombe County, Mike Fulenwider of Burke County, and George Couch of Polk County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring on June 30, 2009.

SECTION 1.64. Cameron M. Harris of Mecklenburg County, Durwood S. Laughinghouse of Wake County, Charles W. Bennett of Mecklenburg County, and Edward Wadsworth Wood of New Hanover County are appointed to the North Carolina Wildlife Resources Commission for terms expiring on June 30, 2007.

PART II. PRESIDENT PRO TEMPORE'S RECOMMENDATIONS

SECTION 2.1. Ralph Brown of Iredell County is appointed to the Alarm Systems Licensing Board for a term expiring on June 30, 2008.

SECTION 2.2. Henry Faircloth of Sampson County is appointed to the North Carolina Appraisal Board for a term expiring on June 30, 2008.

SECTION 2.3. Dr. Paul Rush of Scotland County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term expiring on June 30, 2008.

SECTION 2.3A. Gene Gregory of Currituck County is appointed to the North Carolina Bridge Authority for a term expiring on June 30, 2009.

SECTION 2.4. Dennis Walter of Cumberland County is appointed to the North Carolina Capital Facilities Finance Agency for a term expiring on March 1, 2008.

SECTION 2.5. Dickie Powell of Bunswick County is appointed to the North Carolina Cemetery Commission for a term expiring on June 30, 2009.

SECTION 2.6. Penny Davis of Rutherford County and Carol Eatman of Nash County are appointed to the Child Care Commission for terms expiring on June 30, 2007.

SECTION 2.7.(a) Dr. Steve Willen of Guilford County is appointed to the State Board of Chiropractic Examiners for a term expiring on June 30, 2007.

SECTION 2.7.(b) G.S. 90-139(b) reads as rewritten:

"(b) All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall

serve more than two complete consecutive terms, except that each member shall serve until his successor is chosen and qualifies. The initial appointment of the General Assembly upon the recommendation of the President of the Senate shall be for a term to expire June 30, 1986, and the initial appointment of the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for a term to expire June 30, 1985, subsequent appointments upon the recommendation of the President Pro Tempore of the Senate shall be for terms of three years, subsequent appointments upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years."

SECTION 2.8. Bill Hollan of Forsyth County is appointed to the Clean Water Management Trust Fund Board of Trustees for a term expiring on June 30, 2008. Dickson McLean of Robeson County and Yevonne Brannon of Wake County are appointed to the Clean Water Management Trust Fund for terms expiring on June 30, 2009.

SECTION 2.9. Elizabeth S. Grant of Wake County is appointed to the North Carolina Board of Cosmetic Art Examiners for a term expiring on June 30, 2008.

SECTION 2.10. Section 1.16 of S.L. 2004-158 reads as rewritten:

"**SECTION 1.16.** Joyce Cutler of Beaufort County is appointed to the Crime Victims Compensation Commission for a term expiring on ~~June 30, 2005.~~June 30, 2009."

SECTION 2.11. Wade Anders of Cumberland County, Terry Waterfield of Pasquotank County, Robert C. Lewis of Wake County, and Bonnie Boyette of Nash County are appointed to the North Carolina Criminal Justice Education and Training Standards Commission for terms expiring on June 30, 2008.

SECTION 2.12. Richard McLean of Columbus County, T. Craig Wright of Harnett County, and Doug Logan of Granville County are appointed to the Criminal Justice Information Network Governing Board for terms expiring on June 30, 2009.

SECTION 2.13. Dr. Joye Willcox of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring on June 30, 2008.

SECTION 2.14. Diann Seigle of Wake County is appointed to the Dispute Resolution Commission for a term beginning on October 1, 2005, and expiring on September 30, 2008.

SECTION 2.15. Barbara Arnold of Wayne County, Jan Capps of Durham County, Lynn Bryant of Dare County, and Betsy Wells of Cleveland County are appointed to the Domestic Violence Commission for terms beginning on September 1, 2005, and expiring on August 31, 2007.

SECTION 2.16. Margaret Wingate of Mecklenburg County is appointed to the North Carolina Board of Electrolysis Examiners for a term beginning on September 1, 2005, and expiring on August 31, 2008.

SECTION 2.17. Section 1.22 of S.L. 2004-158 reads as rewritten:

"**SECTION 1.22.** Dr. Steven Edward Landau of Johnston County is appointed to the Emergency Medical Services Advisory Council for a term expiring on ~~June 30, 2005.~~December 31, 2008."

SECTION 2.18. Jon Hamm of Wake County is appointed to the e-NC Authority Commission for a term expiring on December 31, 2006.

SECTION 2.19. Freddie Harrill of Cleveland County, John Gessaman of Nash County, and Forrest Westfall of Yancey County are appointed to the Environmental Management Commission for terms expiring on June 30, 2007.

SECTION 2.20. Richard Joyner of Edgecombe County is appointed to the North Carolina State Board of Fee-Based Practicing Pastoral Counselors for a term beginning on October 1, 2005, and expiring on September 30, 2009.

SECTION 2.21. William Winn of Gates County is appointed to the State Fire and Rescue Commission for a term expiring on June 30, 2007.

SECTION 2.22. Windell Daniels of New Hanover County is appointed to the North Carolina Board of Funeral Service for a term expiring on December 31, 2008.

SECTION 2.23. Linda Guzman of Orange County and Thomasine Kennedy of Duplin County are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring on June 30, 2007.

SECTION 2.24. Paul Wiles of Forsyth County is appointed to the North Carolina Health Insurance Innovations Commission for a term expiring on September 22, 2007, and shall serve as cochair of the Commission during his term.

SECTION 2.25. Dean Carpenter of Gaston County, Sam Ewell of Wake County, and John White of Dare County are appointed to the North Carolina Housing Finance Agency Board of Directors for terms expiring on June 30, 2009.

SECTION 2.26. Rita Thuot of Gaston County, The Honorable Vivian Jones of Wake County, Pamela White of Guilford County, Jeanne Tedrow of Wake County, and Jeffrey Null of Cumberland County are appointed to the North Carolina Housing Partnership for terms beginning on September 1, 2005, and expiring on August 31, 2008.

SECTION 2.27. Paul Brooks of Robeson County is appointed to the North Carolina State Commission of Indian Affairs for a term expiring on June 30, 2007.

SECTION 2.28. Kathryn Ahlport of Guilford County, Jesse Basnight of Orange County, Marian Duncan of Columbus County, The Honorable Bill Purcell of Scotland County, and Carolyn Tracy of Cumberland County are appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for terms expiring on June 30, 2007. The Honorable Katie Dorsett of Guilford County is appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for a term expiring on June 30, 2007, to fill the unexpired term of The Honorable Eric Reeves.

SECTION 2.29. Lloyd Jordan of Pitt County, William J. Faircloth of Mecklenburg County, and Rommie Tillman Ray of Nash County are appointed to the License to Give Trust Fund Commission for terms expiring on April 30, 2007.

SECTION 2.30. Marcus King of Wake County is appointed to the Local Government Commission for a term expiring on June 30, 2009.

SECTION 2.31. Laura Busse of Wake County and Gregory Wright of Cumberland County are appointed to the North Carolina Locksmith Licensing Board for terms expiring on December 31, 2008.

SECTION 2.32. Bernard Sullivan of Gaston County and Stephen Buie of Buncombe County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring on June 30, 2007.

SECTION 2.33. Elizabeth Hobgood Wellons of Johnston County and Patricia Jackson of Nash County are appointed to the Board of Trustees of the North Carolina Museum of Art for terms expiring on June 30, 2007.

SECTION 2.33A. Lois Winstead of Person County is appointed to the Natural Heritage Trust Fund Board of Trustees for a term expiring on December 31, 2009. Portia Haws of Warren County is appointed to the Natural Heritage Trust Fund Board of Trustees for a term expiring on December 31, 2011.

SECTION 2.34. The Honorable Robert B. Spivey of Bertie County, Ray Hollowell of Dare County, Ernie Bowden of Dare County, Elsie Pugh of Camden County, and The Honorable Gene Rogers are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2007.

SECTION 2.35. Donna Whitley of Pitt County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring on June 30, 2006. Robert Morrison of Randolph County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring on June 30, 2007. Marc Chapel of Mecklenburg County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring on June 30, 2008.

SECTION 2.36. Dr. Virginia Adams of New Hanover County and Kathy Weeks of Harnett County are appointed to the North Carolina Nursing Scholars Commission for terms expiring on June 30, 2009.

SECTION 2.37. Edwin Holbrook of Cleveland County, Cynthia Tart of Brunswick County, and Cody Grasty of Haywood County are appointed to the North Carolina Parks and Recreation Authority for terms expiring on July 1, 2008.

SECTION 2.38. Tannis Nelson of New Hanover County, Jay Burrus of Dare County, and Rance Henderson of Burke County are appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., for terms expiring on December 31, 2007.

SECTION 2.39. William Witherspoon of Wake County, Douglas Howey of Wake County, Tom Mehder of Mecklenburg County, Michael Hare of Perquimans County, and Anne Coan of Wake County are appointed to the Petroleum Underground Storage Tank Fund Council for terms expiring on June 30, 2007.

SECTION 2.40. Richard Allen of Anson County and Ronald Burris of Stanly County are appointed to the Private Protective Services Board for terms expiring on June 30, 2008.

SECTION 2.41. Richard Burton of Durham County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term expiring on June 30, 2007.

SECTION 2.42. Ashley Thrift of Forsyth County is appointed to the Board of Trustees for the University of North Carolina Center for Public Television for a term expiring on June 30, 2007.

SECTION 2.43. Tom Morrow of Wake County and Anthony Copeland of Wake County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring on June 30, 2007.

SECTION 2.44. John Pike of Wayne County is appointed to the North Carolina Railroad Board of Directors for a term expiring on June 30, 2009.

SECTION 2.45. Marsha Jordan of Lincoln County is appointed to the North Carolina Real Estate Commission for a term expiring on July 31, 2008.

SECTION 2.46. Tod Clissold of Dare County, Moncie Daniels of Dare County, and Barry Wicker of Dare County are appointed to the Roanoke Island Commission for terms expiring on June 30, 2007.

SECTION 2.47. David Twiddy of Pasquotank County, Thomas Hilliard of Wake County, Robert Saunders of Wake County, Jeffrey Gray of Wake County, and Jim Funderburke of Gaston County are appointed to the Rules Review Commission for terms expiring on June 30, 2007.

SECTION 2.48. Russell Lee Stetson of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring on June 30, 2007.

SECTION 2.49. Hih Song Kim of Brooklyn, New York, is appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for a term expiring on June 30, 2009.

SECTION 2.50. Kirk Alan Preiss of Wake County is appointed to the North Carolina Board of Science and Technology for a term expiring on June 30, 2007.

SECTION 2.51. Edward Hearn of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring on June 30, 2008.

SECTION 2.52. The Honorable Rodney Midgett of Dare County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring on June 30, 2007.

SECTION 2.53. Jane Smith of Robeson County, William Robinette of Richmond County, and William Phipps of Columbus County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2009.

SECTION 2.54. Dewitt Hardee of Johnston County is appointed to the Southern Dairy Compact Commission for a term expiring on June 30, 2009.

SECTION 2.55. Stephen Criscenzo of Wake County is appointed to the State Building Commission for a term expiring on June 30, 2008.

SECTION 2.56. Section 1.26 of S.L. 2004-158 reads as rewritten:

"**SECTION 1.36.** Jane Griffin of Martin County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2005.~~December 31, 2006."

SECTION 2.57. Section 1.48 of S.L. 2004-158 reads as rewritten:

"**SECTION 1.48.** Robin Adams Anderson of Wake County is appointed to the State Personnel Commission for a term expiring on ~~June 30, 2009.~~June 30, 2010."

SECTION 2.58. Derryl Garner of Carteret County is appointed to the North Carolina State Ports Authority for a term expiring on June 30, 2007.

SECTION 2.59. Robert Patterson of Mecklenburg County, Gary Gore of Guilford County, Stan Williams of Wake County, and Bill Hollman of Wake County are appointed to the Commission on State Property for terms expiring on August 14, 2007.

SECTION 2.60. Section 1.69 of S.L. 2004-158 reads as rewritten:

"**SECTION 1.69.** David Turpin of Wake County is appointed to the North Carolina Substance Abuse Professional Certification Board for a term expiring on ~~June 30, 2005.~~June 30, 2006."

SECTION 2.61. Anna Austin of Buncombe County, Gail Gadsden of Durham County, and Lonnia Beam of Gaston County are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring on June 30, 2009.

SECTION 2.62. Dr. Joseph Jenkins of Cumberland County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term expiring on June 30, 2007.

SECTION 2.63. John Cilley of Catawba County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring on June 30, 2007.

SECTION 2.64. Kenneth Wells of Dare County and Grace Edwards of Gaston County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for a term expiring on June 30, 2009.

SECTION 2.65. Leroy Walker of Durham County is appointed to the North Carolina Teaching Fellows Commission for a term expiring on June 30, 2009.

SECTION 2.66. Ray West of Chatham County is appointed to the State Board of Therapeutic Recreation Certification for a term expiring on June 30, 2007.

SECTION 2.67. Lanny Wilson of New Hanover County is appointed to the North Carolina Turnpike Authority for a term expiring on January 14, 2009.

SECTION 2.68. The Honorable Clark Jenkins of Edgecombe County and The Honorable Fletcher Hartsell of Cabarrus County are appointed to the Virginia-North Carolina High-Speed Rail Compact Commission to serve at the pleasure of the President Pro Tempore of the Senate.

SECTION 2.69. Michael Floyd of Mecklenburg County and Elmer Newman of Surry County are appointed to the Well Contractors Certification Board for terms expiring on June 30, 2009. Belinda Ferree of Randolph County is appointed to the Well Contractors Certification Board for a term expiring on June 30, 2006, to fill the unexpired term of Wilson Martin.

SECTION 2.70. William Forsyth of Cherokee County, Sharon Decker of Rutherford County, and The Honorable Joe Sam Queen of Haywood County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring on June 30, 2009.

SECTION 2.71. John Pechmann of Cumberland County, Bobby Purcell of Wake County, Russell Hull of Pasquotank County, and Eugene Price of Wayne County are appointed to the Wildlife Resources Commission for terms expiring on April 24, 2007.

SECTION 2.72. Betty Dobson of Iredell County and Robert Cherry of Edgecombe County are appointed to the Wireless 911 Board for terms expiring on June 30, 2009.

PART III. EDENTON HISTORICAL COMMISSION

SECTION 3.1.(a) G.S. 143B-98 reads as rewritten:

"§ **143B-98. Edenton Historical Commission – members; selection; compensation; quorum.**

The Edenton Historical Commission shall consist of 33 members, ~~18~~ 22 appointed by the Governor to serve at his pleasure, ~~12 elected by the Commission from time to time according to the procedure it adopts, members appointed by the Governor~~ four appointed by the President Pro Tempore of the Senate, four appointed by the Speaker of the House of Representatives, and, ex officio, the Mayor of the Town of Edenton, the Chairman of the Board of Commissioners of Chowan County, and the Secretary of Cultural Resources or his designee.

All the present members of the Commission may continue to serve, at the pleasure of the Governor, until the end of his present term of office. The Commission shall elect its own officers, and the members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum."

SECTION 3.1.(b) Members of the Edenton Historical Commission appointed by the Governor as of July 1, 2005, shall continue to serve at the pleasure of the Governor. Members of the Edenton Historical Commission elected by the Commission as of July 1, 2005, shall no longer serve unless subsequently appointed.

PART IV. EFFECTIVE DATE

SECTION 4.1. The headings to the parts and sections of this act are a convenience to the reader and are for reference only.

SECTION 4.2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of August, 2005.

Became law upon approval of the Governor at 1:56 p.m. on the 22nd day of September, 2005.

H.B. 1541 **Session Law 2005-422**

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

"§ **47F-3-102. Powers of owners' association.**

Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

…

(11) Impose reasonable charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty dollars ($20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

…."

SECTION 2. G.S. 47F-3-103(b) reads as rewritten:

"(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members ~~(G.S. 47F-3-103(f)),~~(G.S. 47F-3-103(e)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant."

SECTION 3. G.S. 47F-3-103 is amended by adding a new subsection to read:

"(f) The association shall publish the names and addresses of all officers and board members of the association within 30 days of their election."

SECTION 4. G.S. 47F-3-107.1 reads as rewritten:

"§ **47F-3-107.1. Procedures for fines and suspension of planned community privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive

board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. ~~If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board.~~ The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~ dollars ~~($150.00)~~ ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 5. G.S. 47F-3-108 reads as rewritten:

"§ **47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised."

SECTION 6. G.S. 47F-3-116 reads as rewritten:

"§ **47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. ~~The~~

Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot

owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 7. G.S. 47F-3-118 reads as rewritten:

"§ **47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized ~~agents.~~agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or

to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 8. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"**§ 47F-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or
4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**'.

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS**'.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 9. G.S. 47F-1-102 reads as rewritten:

"§ **47F-1-102. Applicability.**

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), ~~and~~ G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47C-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter

shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State."

SECTION 10. G.S. 47C-3-102(a)(11) reads as rewritten:

"§ **47C-3-102. Powers of unit owners' association.**

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

…

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of twenty dollars ($20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred ~~fifty~~dollars ~~($150.00)~~($100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;".

SECTION 11. G.S. 47C-3-102(a)(14) reads as rewritten:

"(14) Assign its right to future income, including the right to receive common expense ~~assessments, but only to the extent the declaration expressly so provides;~~assessments."

SECTION 12. G.S. 47C-3-103(b) reads as rewritten:

"(b) The executive board may not act on behalf of the association to amend the declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members ~~(G.S. 47C-3-103(f)),~~(G.S. 47C-3-103(e) and (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant."

SECTION 13. G.S. 47C-3-103 is amended by adding a new subsection to read:

"(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election."

SECTION 14. G.S. 47C-3-107.1 reads as rewritten:

"§ **47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and suspension of condominium privileges or services.**

~~The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of~~

~~the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.~~ Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars ($100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body."

SECTION 15. G.S. 47C-3-108 reads as rewritten:

"§ **47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised."

SECTION 16. G.S. 47C-3-116 reads as rewritten:

"§ **47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record

in the office of the clerk of superior court of the county in which the unit is located in the manner provided ~~therefor by Article 8 of Chapter 44 of the General Statutes.~~herein. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, ~~The~~ the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d) and 47C-3-107.1, are enforceable as assessments under this section.~~

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section ~~must~~ shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47F-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The notice shall set out the outstanding balance due as of the date

of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 17. G.S. 47C-3-118 reads as rewritten:

"§ **47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other ~~records~~ records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's ~~his~~ authorized ~~agents.~~agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

(b) The association, upon written request, shall furnish a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. The statement shall be furnished within 10 business

days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the association's executive board or to a business, business associate, or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payments for services or expenses paid on behalf of the association which are approved in advance by the executive board."

SECTION 18. Article 3 of Chapter 47C of the General Statutes is amended by adding the following new section to read:

"**§ 47C-3-121. American and State flags and political sign displays.**

Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:

1. Flag of the United States of America;
2. American flag;
3. United States flag; or
4. North Carolina flag.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States or North Carolina flag only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**'.

This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property owned exclusively by the member, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term 'political signs'.

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to

regulate or prohibit the display of political signs only if the restriction specifically states: '**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS**'.

Even when display of a political sign is permitted under this subdivision, an association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, 'political sign' means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 19. G.S. 47C-1-102 reads as rewritten:

"§ **47C-1-102. Applicability.**

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 ~~(Charges for Late Payment, Fines~~(Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after October 1, 1986 and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created on or before October 1, 1986 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to

any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108) apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under G.S. 47C-4-101(b)."

SECTION 20. This act becomes effective January 1, 2006, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:56 p.m. on the 22nd day of September, 2005.

S.B. 1029 **Session Law 2005-423**

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY, TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION AND TO MAKE CHANGES TO LANDLORD TENANT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3 reads as rewritten:

"§ **50B-3. Relief.**

(a) ~~The~~ If the court, including magistrates as authorized under G.S. 50B-2(c1), ~~may grant any~~finds that an act of domestic violence has occurred, the court shall grant a protective order ~~to bring about a cessation of acts of domestic violence. The orders may:~~restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such ~~acts;~~acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or ~~household;~~household.

(3) Require a party to provide a spouse and his or her children suitable alternate ~~housing;~~housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of ~~process;~~process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to ~~it;~~it.

(6) Order either party to make payments for the support of a minor child as required by ~~law;~~law.

(7) Order either party to make payments for the support of a spouse as required by ~~law;~~law.

(8) Provide for possession of personal property of the ~~parties;~~parties.

(9) Order a party to refrain from doing any or all of the following:
   a. Threatening, abusing, or following the other ~~party,~~party.
   b. Harassing the other party, including by telephone, visiting the home or workplace, or other ~~means, or~~means.
   c. Otherwise interfering with the other ~~party;~~party.

(10) Award attorney's fees to either ~~party;~~party.

(11) Prohibit a party from purchasing a firearm for a time fixed in the ~~order;~~order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence ~~Commission; and~~Commission.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

(1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.

(2) For purposes of determining custody and visitation issues, the court shall consider:
   a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.
   b. Whether the minor child was present during acts of domestic violence.
   c. Whether a weapon was used or threatened to be used during any act of domestic violence.
   d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.
   e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.
   f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.
   g. Whether there is a pattern of abuse against an aggrieved party or the minor child.
   h. Whether a party has abused or endangered the minor child during visitation.
   i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.
   j. Whether a party has improperly concealed or detained the minor child.
   k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.

(3) If the court awards custody, the court shall also consider whether visitation is in the best interest of the minor child. If ordering visitation, the court shall provide for the safety and well-being of the minor child and the safety of the aggrieved party. The court may consider any of the following:

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
e. Ordering the noncustodial parent to pay the costs of supervised visitation.
f. Prohibiting overnight visitation.
g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed ~~one year,~~two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by

the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, renewals, and dismissals of the order shall also be promptly entered."

SECTION 2. G.S. 50B-3.1(e) reads as rewritten:

"(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal ~~law.~~law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order."

SECTION 3. G.S. 50B-3.1(f) reads as rewritten:

"(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current ~~order.~~order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been ~~renewed;~~renewed.

(2) Whether the defendant is subject to any other protective ~~orders; or~~orders.

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

(4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal ~~law.~~law or if the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges."

SECTION 4. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause

may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or ~~spouse abuse;~~domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause."

SECTION 5. G.S. 42-40 reads as rewritten:

"§ **42-40. Definitions.**

For the purpose of this Article, the following definitions shall apply:

…

(4) "Protected tenant" means a tenant or household member who is a victim of domestic violence under Chapter 50B of the General Statutes or sexual assault or stalking under Chapter 14 of the General Statutes."

SECTION 6. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new sections to read:

"**§ 42-42.1. Victim protection – nondiscrimination.**

A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a rental agreement under G.S. 42-45.1. Evidence provided to the landlord of domestic violence, sexual assault, or stalking may include any of the following:

(1) Law enforcement, court, or federal agency records or files.

(2) Documentation from a domestic violence or sexual assault program.

(3) Documentation from a religious, medical, or other professional.

"**§ 42-42.2. Victim protection – change locks.**

(a) If the perpetrator of domestic violence, sexual assault, or stalking is not a tenant in the same dwelling unit as the protected tenant, a tenant of a dwelling may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. A protected tenant is not required to provide documentation of the domestic violence, sexual assault, or stalking to initiate the changing of the locks, pursuant to this subsection. A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 48 hours.

(b) If the perpetrator of the domestic violence, sexual assault, or stalking is a tenant in the same dwelling unit as the victim, any tenant or protected tenant of a dwelling unit may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. In these circumstances, the following shall apply:

(1) Before the landlord or tenant changes the locks under this subsection, the tenant must provide the landlord with a copy of an order issued by a court that orders the perpetrator to stay away from the dwelling unit.

(2) Unless a court order allows the perpetrator to return to the dwelling to retrieve personal belongings, the landlord has no duty under the rental agreement or by law to allow the perpetrator access to the dwelling unit, to provide keys to the perpetrator, or to provide the perpetrator access to the perpetrator's personal property within the dwelling unit

once the landlord has been provided with a court order requiring the perpetrator to stay away from the dwelling. If a landlord complies with this section, the landlord is not liable for civil damages, to a perpetrator excluded from the dwelling unit, for loss of use of the dwelling unit or loss of use or damage to the perpetrator's personal property.

(3) The perpetrator who has been excluded from the dwelling unit under this subsection remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 72 hours.

(c) The protected tenant shall bear the expense of changing the locks. If a landlord fails to act within the required time, the protected tenant may change the locks without the landlord's permission. If the protected tenant changes the locks, the protected tenant shall give a key to the new locks to the landlord within 48 hours of the locks being changed."

SECTION 7. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new section to read:

"§ **42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.**

(a) Any protected tenant may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord shall be accompanied by either: (i) a copy of a valid order of protection issued by a court pursuant to Chapter 50B or 50C of the General Statutes, other than an ex parte order, (ii) a criminal order that restrains a person from contact with a protected tenant, or (iii) a valid Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a minor member of the tenant's household. A victim of domestic violence or sexual assault must submit a copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic violence or sexual assault program which substantially complies with the requirements set forth in G.S. 50B-9 and must recommend relocation of the protected tenant.

(b) Upon termination of a rental agreement under this section, the tenant who is released from the rental agreement pursuant to subsection (a) of this section is liable for the rent due under the rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or fees due only to the early termination of the tenancy. If, pursuant to this section, a tenant terminates the rental agreement 14 days or more before occupancy, the tenant is not subject to any damages or penalties.

(c) Notwithstanding the release of a protected tenant from a rental agreement under subsection (a) of this section, or the exclusion of a perpetrator of domestic violence, sexual assault, or stalking by court order, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(d) The provisions of this section may not be waived or modified by agreement of the parties."

SECTION 8. G.S. 157-29(b) reads as rewritten:

"(b) In the operation or management of housing projects, ~~or~~ portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

…

(3) In the administration of its waiting lists, it shall adopt a preference for households with incomes of less than thirty percent (30%) of the area median income.

(4) An authority shall take applications on a continuous basis from persons meeting the preference listed in this section and shall not close the application process to these persons. Any additional local preferences shall not take priority over the preference in this section."

SECTION 9. G.S. 7A-219 reads as rewritten:

"§ **7A-219. Certain counterclaims; cross claims; third-party claims not permissible.**

No counterclaim, cross claim or third-party claim which would make the amount in controversy exceed the jurisdictional amount established by G.S. 7A-210(1) is permissible in a small claim action assigned to a magistrate. No determination of fact or law in an assigned small claim action estops a party thereto in any subsequent action which, except for this section, might have been asserted under the Code of Civil Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, Rule 13, failure by a defendant to file a counterclaim in a small claims action assigned to a magistrate, or failure by a defendant to appeal a judgment in a small claims action to district court, shall not bar such claims in a separate action."

SECTION 10. G.S. 42-30 reads as rewritten:

"§ **42-30. Judgment by ~~confession or~~confession, where plaintiff has proved ~~case.~~case, or failure to appear.**

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if (i) the plaintiff proves his case by a preponderance of the evidence, ~~or~~ (ii) the defendant admits the allegations of the complaint, or (iii) the defendant fails to appear on the day of court, and the plaintiff requests in open court a judgment for possession based solely on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed a responsive pleading, the magistrate shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding the jurisdictional amount established by G.S. 7A-210(1), be claimed in the oath of the plaintiff as due and unpaid, the magistrate shall inquire thereof, and if supported by a preponderance of the evidence, give judgment as he may find the fact to be."

SECTION 11. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of

determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate."

SECTION 12. Section 1 of this act becomes effective October 1, 2005, and applies to orders entered on or after that date. Sections 5, 6, and 7 of this act become effective October 1, 2005, and apply to leases entered into or renewed on or after that date. The remainder of this act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:57 p.m. on the 22nd day of September, 2005.

H.B. 646 **Session Law 2005-424**

AN ACT TO CONSOLIDATE VARIOUS FEES INTO THE ANNUAL LICENSE CONTINUATION FEE PAID BY LICENSED INSURANCE COMPANIES, AND TO AUTHORIZE THE DEPARTMENT OF INSURANCE TO HIRE A MEDICARE LOOKOUT PROGRAM COORDINATOR WITH FEDERAL GRANT FUNDING.

The General Assembly of North Carolina enacts:

PART I. INSURANCE FEES.

SECTION 1.1. G.S. 58-6-5 reads as rewritten:

"§ **58-6-5. Schedule of fees and charges.**

The Commissioner shall collect and pay into the State treasury fees and charges as follows:

(1) For filing and examining an insurance company application for admission, a nonrefundable fee of two hundred fifty dollars ($250.00),

to be submitted with ~~such filing; for filing and auditing annual statement, one hundred dollars ($100.00); for filing any other papers required by law, twenty-five dollars ($25.00); for each certificate of examination, condition, or qualification of company or association, fifteen dollars ($15.00); for each seal when required, ten dollars ($10.00); for a list of licensed insurance companies, ten dollars ($10.00).~~ the filing; for each certification or confirmation of an insurance company deposit held by the Commissioner pursuant to this Chapter, twenty-five dollars ($25.00).

(2) Repealed by Session Laws 1977, c. 376, s. 2.

(3) The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy ~~sheet and ten dollars ($10.00) for certifying same, or any fact or data from the records of his office and for the examination and approval of charters of companies, twenty-five dollars ($25.00).~~ sheet.

(4) He shall collect all other fees and charges due and payable into the State treasury by any company, association, order, or individual under his Department.

(5) Repealed by Session Laws 1999-435, s. 1."

SECTION 1.2. G.S. 58-6-7 reads as rewritten:

"§ **58-6-7. Licenses; perpetual licensing; annual license continuation fees for insurance companies.**

(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the Commissioner. The license shall be perpetual and shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. ~~Except as provided in subsection (b) of this section, the~~The insurance company shall pay a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company	$ 25.00
For each fraternal order	~~100.00~~ 500.00
For each of all other insurance companies, except mutual burial associations taxed under G.S.105-121.1	~~1,000.00~~ 1,500.00

The fees levied in this subsection are in addition to those specified in G.S. 58-6-5.

~~(b) When the paid-in capital stock or surplus, or both, of an insurance company, other than a farmer's mutual assessment company or a fraternal order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be one-half the amount specified.~~

(c) Upon payment of the fee specified above and the fees and taxes elsewhere ~~specified~~ specified, each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized ~~therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of~~

~~business done.~~ therein. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees in this section."

SECTION 1.3. G.S. 58-7-150(c) and G.S. 58-7-155 are repealed.

SECTION 1.4. G.S. 58-8-60(b) reads as rewritten:

"(b) The articles of incorporation shall provide for the name of the corporation, to be approved by the Commissioner; the kinds of insurance it proposes to transact and on what business plan or principle; and the place of its location in the State. The certificate of incorporation must be subscribed and sworn to by a majority of the board of directors before an officer authorized to take acknowledgement of deeds, who shall certify the certificate to the Commissioner. The Commissioner shall review the certificate and articles of incorporation and file them with the Secretary of State in accordance with ~~G.S. 58-7-35 upon payment of the required fees.~~ G.S. 58-7-35."

SECTION 1.5. G.S. 58-65-55 reads as rewritten:

"§ **58-65-55. Issuance and continuation of license.**

(a) Every corporation subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license. Fee payment shall be contemporaneous with the filing. Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a license upon the payment of a fee of ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of ~~one thousand dollars ($1,000),~~ one thousand five hundred dollars ($1,500), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 1.6. G.S. 58-67-160 reads as rewritten:

"§ **58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license and an annual license continuation fee of ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) for each license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

PART II. AUTHORIZATION FOR MEDICARE LOOKOUT PROGRAM COORDINATOR.

SECTION 2. If the Department of Insurance receives grant funding from the Federal Administration on Aging, the Department may establish a full-time, federally funded position for a Medicare Lookout Program Coordinator for the State Health Insurance Information Program, whose purpose is to reduce fraud in the Medicare and Medicaid programs. The Department may hire an Extension Training Specialist III, pay grade level 73. This authorization is contingent upon the receipt of the federal grant that will fully fund the position.

PART III. EFFECTIVE DATES.

SECTION 3. Part I of this act becomes effective January 1, 2006, and applies to applications filed, licenses issued, and licenses continued on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:57 p.m. on the 22nd day of September, 2005.

H.B. 650 **Session Law 2005-425**

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES, TO CLARIFY THE PROCEDURE FOR ASSIGNING COMPLEX BUSINESS CASES, TO AUTHORIZE A LARGER FEE FOR COMPLEX BUSINESS CASES, AND TO CHANGE THE DATE DISTRICT COURT JUDGES TAKE OFFICE.

The General Assembly of North Carolina enacts:

PART I. BUSINESS COURT JUDGES AND FEES.

SECTION 1.1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice. Any judge so designated shall be known as a Business Court Judge and shall preside in the Business Court. If there is more than one business court judge, the Chief Justice may designate one of them as the Senior Business Court Judge. If there is no designation by the Chief Justice, the judge with the longest term of service on the court shall serve as Senior Business Court Judge until the Chief Justice makes an appointment to the position."

SECTION 1.2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted

to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

PART II. ASSIGNMENT OF COMPLEX BUSINESS CASES.

SECTION 2. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ **7A-45.4. Designation of mandatory complex business cases.**

(a) A mandatory complex business case is an action that involves a material issue related to:

(1) The law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.

(2) Securities law, including proxy disputes and tender offer disputes.

(3) Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.

(4) State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.

(5) Intellectual property law, including software licensing disputes.

(6) The Internet, electronic commerce, and biotechnology.

(b) Any party may designate a civil action as a mandatory complex business case by filing a Notice of Designation in the Superior Court in which the action has been filed and simultaneously serving the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme Court for approval of

the designation of the action as a mandatory complex business case and assignment to a specific Business Court Judge.

(c) The Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of the designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) of this section.

(d) The Notice of Designation shall be filed:

(1) By the plaintiff or third-party plaintiff contemporaneously with the filing of the complaint or third-party complaint in the action.

(2) By any intervenor when the intervenor files a motion for permission to intervene in the action.

(3) By any defendant or any other party within 30 days of receipt of service of the pleading seeking relief from the defendant or party.

(e) Within 30 days after service of the Notice of Designation, any other party may, in good faith, file and serve an opposition to the designation of the action as a mandatory business case. Based on the opposition or ex mero motu, the Business Court Judge may determine that the action should not be designated as a mandatory complex business case. If a party disagrees with the decision, the party may appeal to the Chief Justice of the Supreme Court.

(f) Once a designation is filed under subsection (d) of this section, and after preliminary approval by the Chief Justice, a case shall be designated and administered a complex business case. All proceedings in the action shall be before the Business Court Judge to whom it has been assigned unless and until an order has been entered under subsection (e) of this section ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval. If complex business case status is revoked or denied, the action shall be treated as any other civil action, unless it is designated as an exceptional civil case or a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts."

PART III. DISTRICT COURT JUDGE TERM.

SECTION 3.1. G.S. 7A-140 reads as rewritten:

"§ **7A-140. Number; election; term; qualification; oath.**

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he or she is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of four years, beginning on the first ~~Monday in December~~day in January next ~~following his~~after election.

Each district judge shall devote his or her full time to the duties of ~~his~~the office. He or she shall not practice law during ~~his~~the term, nor shall he or she during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his or her duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

SECTION 3.2. The table entries in G.S. 163-1 for the Justices and Judges read as rewritten:

"OFFICE JURISDICTION DATE OF ELECTION TERM OF OFFICE

…

Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	Superior Court District	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first ~~Monday in December next~~ day in January next after election

…."

PART IV. EFFECTIVE DATES.

SECTION 4. Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. 128-7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:58 p.m. on the 22nd day of September, 2005.

S.B. 814 **Session Law 2005-426**

AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL PROVISIONS

SECTION 1.(a) G.S. 160A-364 reads as rewritten:

"§ **160A-364. Procedure for ~~adopting or amending~~ adopting, amending, or repealing ordinances under Article.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance."

SECTION 1.(b) G.S. 153A-323 reads as rewritten:

"§ **153A-323. Procedure for ~~adopting or amending~~ adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19.**

(a) Before ~~adopting or amending~~ adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance."

PART II. SUBDIVISION REGULATION

SECTION 2.(a) G.S. 160A-372 reads as rewritten:

"§ **160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving

residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that ~~the final plat~~plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal ~~policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning ~~agency.~~ board. In order for this authorization to become effective, before approving such plans the council or planning ~~agency~~ board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning ~~agency~~ board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning ~~agency~~ board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.~~

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of

funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

SECTION 2.(b) G.S. 153A-331 reads as rewritten:

"§ **153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of ~~streets and highways~~transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions ~~essential to~~ that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land ~~which~~that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement

between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county ~~policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.~~plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning ~~agency.~~ board. For the authorization to reserve school sites to be effective, the board of commissioners or planning ~~agency,~~board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning ~~agency~~ board shall immediately notify the board of education. ~~That~~ The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning ~~agency~~ board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

~~The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place.~~"

SECTION 3.(a) G.S. 160A-375 reads as rewritten:

"§ **160A-375. Penalties for transferring lots in unapproved subdivisions.**

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of

any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds."

SECTION 3.(b) G.S. 153A-334 reads as rewritten:

"§ **153A-334. Penalties for transferring lots in unapproved subdivisions.**

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land

before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds."

SECTION 4.(a) G.S. 160A-376 reads as rewritten:

"§ **160A-376. Definition.**

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is ~~involved;~~involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system ~~corridors; and~~ corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

(b) A city may provide for expedited review of specified classes of subdivisions."

SECTION 4.(b) G.S. 153A-335 reads as rewritten:

"§ **153A-335. "Subdivision" defined.**

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision ~~regulations;~~regulations.

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is ~~involved;~~ involved.

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system ~~corridors; and~~ corridors.

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

(b) A county may provide for expedited review of specified classes of subdivisions."

PART III. ZONING REGULATION

SECTION 5.(a) G.S. 160A-381 reads as rewritten:

"§ **160A-381. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, ~~and~~ the location and use of buildings, structures and ~~land for trade, industry, residence or other purposes and to~~ land. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

~~(c)~~ Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. ~~When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of

the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection."

SECTION 5.(b) G.S. 153A-340 reads as rewritten:

"§ **153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other ~~purposes, and to~~ purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein ~~contained.~~contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. ~~When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to~~

~~review by the superior court by proceedings in the nature of certiorari.~~ When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

~~(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for

review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection."

SECTION 5.1.(a) G.S. 160A-75 reads as rewritten:

"§ **160A-75. Voting.**

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14-234.~~ 14-234, 160A-381(d), or 160A-388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action

having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 5.1.(b) G.S. 153A-44 reads as rewritten:

"§ **153A-44. Members excused from voting.**

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. ~~14-234.~~ 14-234, 153A-340(g), or 153A-345(e1). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 6.(a) G.S. 160A-382 reads as rewritten:

"§ **160A-382. Districts.**

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~ permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner or the city or its agencies, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

SECTION 6.(b) G.S. 153A-342 reads as rewritten:

"§ **153A-342. Districts; zoning less than entire jurisdiction.**

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts

may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; ~~and~~ special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use ~~permit.~~permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use ~~district or conditional use district~~ district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner or the county or its agencies, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to county ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

SECTION 7.(a) G.S. 160A-383 reads as rewritten:

"§ **160A-383. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers;~~plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote ~~health~~the public health, safety, and ~~the~~ general ~~welfare;~~welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion

in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city."

SECTION 7.(b) G.S. 153A-341 reads as rewritten:

"§ **153A-341. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive ~~plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers;~~plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public ~~health~~health, safety, and ~~the~~ general ~~welfare;~~ welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development."

PART IV. INFRASTRUCTURE AGREEMENTS

SECTION 8.(a) Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-499. Reimbursement agreements.**

(a) A city may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the city's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A city shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A city may provide for such reimbursements to be paid from any lawful source.

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the city."

SECTION 8.(b) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Reimbursement agreements.**

(a) A county may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the county's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A county shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A county may provide for such reimbursements to be paid from any lawful source.

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the county."

SECTION 8.(c) Article 15 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-309. Intersection and roadway improvements.**

A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the city or its designated agency determines that: (i) the public cost will not exceed the estimated cost of providing for those public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section."

SECTION 8.(d) Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-320. Public enterprise improvements.**

(a) Authorization. – A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land

development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project."

SECTION 8.(e) Article 15 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-280. Public enterprise improvements.**

(a) Authorization. – A county may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the county to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the county's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the county determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A county may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the county. The private party may assist the county in obtaining easements in favor of the county from private property owners on those properties that will be involved in or affected by the project. The contract between the county and the private party may be entered into before the acquisition of any real property necessary to the project."

PART V. DEVELOPMENT AGREEMENTS

SECTION 9.(a) Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"**§ 160A-400.20. Authorization for development agreements.**

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"§ **160A-400.21. Definitions.**

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context,

'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The city council of a municipality.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any municipality that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G.S. 160A-361.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"**§ 160A-400.22. Local governments authorized to enter into development agreements; approval of governing body required.**

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

"**§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

"**§ 160A-400.24. Public hearing.**

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).

"**§ 160A-400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.**

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance

standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"**§ 160A-400.26. Law in effect at time of agreement governs development; exceptions.**

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160A-385.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 160A-385 or G.S. 160A-385.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"**§ 160A-400.27. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.**

(a) Procedures established pursuant to G.S. 160A-400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b).

"**§ 160A-400.28. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"**§ 160A-400.29. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.**

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"**§ 160A-400.30. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.**

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"**§ 160A-400.31. Applicability to local government of constitutional and statutory procedures for approval of debt.**

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"**§ 160A-400.32. Relationship of agreement to building or housing code.**

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations."

SECTION 9.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new Part to read:

"Part 3A. Development Agreements.

"**§ 153A-379.1. Authorization for development agreements.**

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law.

"§ **153A-379.2. Definitions.**

The following definitions apply in this Part:

(1) Comprehensive plan. – The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. – A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. 'Development', as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, 'development' refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. – The board of county commissioners of a county.

(6) Land development regulations. – Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. – All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Property. – All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(9) Local government. – Any county that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(10) Local planning board. – Any planning board established pursuant to G.S. 153A-321.

(11) Person. – An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

"**§ 153A-379.3. Local governments authorized to enter into development agreements; approval of governing body required.**

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

"**§ 153A-379.4. Developed property must contain certain number of acres; permissible durations of agreements.**

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

"**§ 153A-379.5. Public hearing.**

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 153A-323 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing

the proposed development (such as meeting defined completion percentages or other performance standards).

"**§ 153A-379.6. What development agreement must provide; what it may provide; major modification requires public notice and hearing.**

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 153A-379.8 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part.

"**§ 153A-379.7. Law in effect at time of agreement governs development; exceptions.**

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 153A-344.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 153A-344 or G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement.

"**§ 153A-379.8. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.**

(a) Procedures established pursuant to G.S. 153A-379.3 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 153A-345(b).

"**§ 153A-379.9. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

"**§ 153A-379.10. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.**

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

"**§ 153A-379.11. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.**

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

"**§ 153A-379.12. Applicability to local government of constitutional and statutory procedures for approval of debt.**

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt.

"**§ 153A-379.13. Relationship of agreement to building or housing code.**

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations."

PART VI. LOCAL ACTS SAVING CLAUSE

SECTION 10. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

PART VII. EFFECTIVE DATE

SECTION 11. This section and G.S. 160A-381(e), as enacted by Section 5(a) of this act, and G.S. 153A-340(h), as enacted by Section 5(b) of this act, become effective September 1, 2005. Any renewal or extension on or after September 1, 2005, of a moratorium on development approvals that is in effect prior to or on that date, is subject to the provisions of this act. The remainder of this act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:59 p.m. on the 22nd day of September, 2005.

H.B. 1493 **Session Law 2005-427**

AN ACT ESTABLISHING THE PHARMACY QUALITY ASSURANCE PROTECTION ACT TO FACILITATE THE CONTINUOUS REVIEW OF THE PRACTICE OF PHARMACY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-85.21(a) reads as rewritten:

"(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application shall identify the pharmacist-manager of the pharmacy and all pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in pharmacy personnel within 30 days of the change. In addition to identifying the pharmacist-manager, a pharmacy may identify a pharmacy permittee's designated agent that the Board shall notify of any investigation of the pharmacy or a pharmacist employed by the pharmacy. The notice shall include the specific reason for the investigation and be given prior to the initiation of any disciplinary proceedings."

SECTION 2. G.S. 90-85.26 reads as rewritten:

"§ **90-85.26. Prescription orders preserved.**

(a) Every pharmacist-manager of a pharmacy shall maintain for at least three years the original of every prescription order and refill compounded or dispensed at the pharmacy except for prescription orders recorded in a patient's medical record. An automated data processing system may be used for the storage and retrieval of refill information for prescriptions pursuant to the regulations of the Board.

(b) Every pharmacy permittee's designated agent shall maintain documentation of alleged medication errors and incidents described in G.S. 90-85.47(e)(1) for which the pharmacy permittee has knowledge."

SECTION 3. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 4B.

"Pharmacy Quality Assurance Protection Act.

"§ **90-85.45. Legislative intent.**

It is the intent of the General Assembly to require pharmacy quality assurance programs to further contribute to and enhance the quality of health care and reduce medication errors in this State by facilitating a process for the continuous review of the practice of pharmacy.

"§ **90-85.46. Definitions.**

The following definitions shall apply in this Article:

(1) Board. – The North Carolina Board of Pharmacy.

(2) Pharmacy quality assurance program. – A program pertaining to one of the following:

a. A pharmacy association created under G.S. 90-85.4 or incorporated under Chapter 55A of the General Statutes that evaluates the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services.

b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21(a) to evaluate the quality of pharmacy services and alleged

medication errors and incidents and make recommendations to improve the quality of pharmacy services.

c. A quality assurance committee or medical or peer review committee established by a health care provider licensed under this Chapter or a health care facility licensed under Chapter 122C, 131D, or 131E of the General Statutes that includes evaluation of the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services.

"§ **90-85.47. Pharmacy quality assurance program required; limited liability; discovery.**

(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21(a), shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

(1) The quality of the practice of pharmacy.

(2) The cause of alleged medication errors and incidents.

(3) Pharmaceutical care outcomes.

(4) Possible improvements for the practice of pharmacy.

(5) Methods to reduce alleged medication errors and incidents.

(b) There shall be no monetary liability on the part of, or no cause of action for damages arising against, any member of a duly appointed pharmacy quality assurance program or any pharmacy or pharmacist furnishing information to a pharmacy quality assurance program or any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed within the scope of the functions of the pharmacy quality assurance program.

(c) This section shall not be construed to confer immunity from liability on any professional association, pharmacy or pharmacist, or health care provider while performing services other than as a member of a pharmacy quality assurance program or upon any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed outside the scope of the functions of the pharmacy quality assurance program. Except as provided in subsection (a) or (b) of this section, where a cause of action would arise against a pharmacy, pharmacist, or an individual health care provider, the cause of action shall remain in effect.

(d) The proceedings of a pharmacy quality assurance program, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1 or G.S. 58-2-100 and shall not be subject to discovery or introduction into evidence in any civil action, administrative hearing or Board investigation against a pharmacy, pharmacist, pharmacy technician, a pharmacist manager or a permittee or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action, administrative hearing or Board Investigation results from matters that are the subject of evaluation and review by the pharmacy quality assurance program. No person who was in attendance at a meeting of the pharmacy quality assurance program shall be required to testify in any civil action, administrative hearing or Board investigation as to any evidence or other matters produced or presented during the proceedings of the pharmacy quality assurance program or as to any findings, recommendations, evaluations, opinions, or other actions of the pharmacy quality

assurance program or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the pharmacy quality assurance program. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the pharmacy quality assurance program. A member of the pharmacy quality assurance program may testify in a civil or administrative action but cannot be asked about the person's testimony before the pharmacy quality assurance program or any opinions formed as a result of the pharmacy quality assurance program. Nothing in this subsection shall preclude:

(1) A pharmacy, pharmacist, pharmacy technician, or other person or any agent or representative of a pharmacy, pharmacist, pharmacy technician or other person participating on a pharmacy quality assurance program may use otherwise privileged, confidential information for legitimate internal business or professional purposes of the pharmacy quality assurance program.

(2) A pharmacy, pharmacist, pharmacy technician, other person participating on the committee, or any person or organization named as a defendant in a civil action, a respondent in an administrative proceeding, or a pharmacy, pharmacist, or pharmacy technician subject to a Board investigation as a result of participation in the pharmacy quality assurance program may use otherwise privileged, confidential information in the pharmacy quality assurance program or person's own defense. A plaintiff in the civil action or the agency in the administrative proceeding may disclose records or determinations of or communications to the pharmacy quality assurance program in rebuttal to information given by the defendant, respondent, or pharmacist subject to Board investigation.

(e) Upon the Board providing written notice to the pharmacy permittee's designated agent under G.S. 90-85.21(a) and pharmacist of an investigation against the pharmacist, including the specific reason for the Board investigation, the pharmacy permittee's designated agent shall compile and provide documentation within 10 days of the receipt of the notice of any alleged medication error or incident committed by the pharmacist in the 12 months preceding the receipt of the notice, that the pharmacy permittee has knowledge of, when:

(1) The alleged medication error or incident resulted in any of the following:

a. A visit to a physician or an emergency room attributed to the alleged medication incident or error.

b. Hospitalization requiring an overnight stay or longer.

c. A fatality.

(2) The Board has initiated a disciplinary proceeding against the pharmacist as a result of the investigation. Unless the documentation relates to an alleged medication error or incident that was specifically the cause of the investigation, the Board may review the documentation only after the Board has made findings of fact and conclusions of law pursuant to G.S. 150B-42(a) and may use the documentation in determining the remedial action the pharmacist shall undergo as part of the disciplinary action imposed by the Board. The

documentation shall be released only to the Board or its designated employees pursuant to this subsection and shall not otherwise be released except as required by law.

The documentation provided to the Board shall not include the proceedings and records of a pharmacy quality assurance program or information prepared by the pharmacy solely for consideration by or upon request of a pharmacy quality assurance program.

(f) Nothing in this section shall preclude the Board from obtaining information concerning a specific alleged medication error or incident that is the subject of a Board investigation resulting from a complaint to the Board."

SECTION 4. This act becomes effective January 1, 2006. Section 3 of this act shall supersede all administrative rules regulating the maintenance of alleged medication error or incident records in effect as of January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 2:00 p.m. on the 22nd day of September, 2005.

H.B. 1115 **Session Law 2005-428**

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE OTHER RELATED DATES; TO EXPRESSLY ALLOW ELECTRONIC POLLBOOKS; TO CLARIFY HOW WINNERS OF ELECTIONS SHALL BE DETERMINED; TO CLARIFY THAT A VOTER WHOSE NAME HAS BEEN REMOVED FROM THE REGISTRATION LIST MAY VOTE UPON AFFIRMING THAT THE VOTER HAS NOT MOVED FROM THE COUNTY; TO PROVIDE FOR THE CORRECTION OF AN OMISSION ON THE VOTER REGISTRATION FORM; TO AUTHORIZE PARTICIPATION IN THE 2010

CENSUS REDISTRICTING DATA PROGRAM; AND TO AUTHORIZE BOARDS OF ELECTIONS TO ALLOW KNOWN VOTERS WHOSE VOTES WERE LOST TO RECAST THEIR BALLOTS DURING A TWO-WEEK PERIOD AFTER THE ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-45 reads as rewritten:

"§ **163-45. Observers; appointment.**

The ~~chairman~~ chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party ~~chairman,~~ chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each ~~chairman~~ chair contains the names of all persons authorized to represent such ~~chairman's~~chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the ~~chairman~~ chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the ~~chairman~~ chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the ~~chairman~~ chair shall deliver one copy of the list to the chief judge for each affected precinct. ~~He~~ The chair shall retain the other copy. The ~~chairman,~~ chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the ~~chairman~~ chair of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and ~~he~~ shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting ~~his~~ a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit ~~him~~ the observer to make such observation and take such notes as ~~he~~ the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each

observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. Instead of having an observer receive the voting list, the county party chair may send a runner to do so. The runner may be the precinct party chair or any person named by the county party chair. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence and to receive the list. The runner must leave immediately after being provided with the list."

SECTION 1.(b) G.S. 163-166.3 reads as rewritten:

"§ **163-166.3. Limited access to the voting enclosure.**

During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.

(2) An observer appointed pursuant to G.S. 163-45.

(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.

(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.

(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.

(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.

(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.

(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.

(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need."

SECTION 2. G.S. 163-165.10 reads as rewritten:

"§ **163-165.10. Adequacy of voting system for each precinct.**

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at the precinct may do so.~~ equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the

county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law."

SECTION 3.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.15A. Administrative change of registration when county line is adjusted.**

When a boundary between counties is established by legislation or under G.S. 153A-18, the Executive Director shall direct the county boards of elections involved to administratively change the voter registration of any voter whose county of residence is altered by the establishment of the boundary. The voter shall not be required to submit a new application to register, and the provisions of G.S. 163-57 shall apply to the determination of residency. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 3.(b) G.S. 163-57 reads as rewritten:

"**§ 163-57. Residence defined for registration and voting.**

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another ~~state or county~~state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any ~~county~~ county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that ~~county~~ county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another ~~state or county~~ state or county, municipality, precinct, ward, or other election district within this State, with the intention of making that ~~state or county~~ state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the ~~state or county~~ state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another ~~state or county~~ state or county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that ~~state or county~~ state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this ~~State or the county~~ State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another~~ state or county~~ state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in ~~this State or county.~~that State, county, municipality, precinct, ward, or other election district from which that person removed.

(7) School teachers who remove to a ~~county~~ county, municipality, precinct, ward, or other election district in this State for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live ~~in the county in which~~ where their parents or other relatives ~~reside,~~reside in this State and who do not have the intention of becoming residents of the ~~county~~ county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the ~~county~~ county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a ~~county~~ county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the ~~county~~ county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until ~~6:00~~ 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than ~~6:00~~ 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.
3. Any of the proceedings will occur within 30 days before election day."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. ~~If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.~~ A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State

Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except ~~a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative or the voter's verifiable legal guardian;~~as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance ~~in getting to and from the voting booth or private room and in preparing and marking that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian;~~except as provided in G.S. 163-227.2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot."

SECTION 6.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters."

SECTION 6.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

SECTION 7. G.S. 163-227.2(c) reads as rewritten:

"(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots ~~issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and~~ issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in the presence of the ~~chairman~~chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate."

SECTION 8. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	**Amount of Filing Fee**
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought

United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
~~County commissioners, if compensated entirely by fees~~	~~Ten dollars ($10.00)~~
~~Members of county board of education, if compensated entirely by fees~~	~~Five dollars ($5.00)~~
~~Sheriff, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Clerk of superior court, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Register of deeds, if compensated entirely by fees~~	~~Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)~~
~~Any other county office, if compensated entirely by fees~~	~~Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)~~
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

SECTION 9. G.S. 163-82.9 reads as rewritten:

"§ **163-82.9. Cancellation of prior registration.**

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled."

SECTION 10.(a) G.S. 163-82.10(b) reads as rewritten:

"(b) Access to Registration Records. – Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. ~~The~~ Both the following shall apply ~~if a county maintains or has its voter registration list maintained on a computer:~~to all counties:

(1) ~~In addition to the typed, mimeographed, photocopied, computer printout or label lists, the~~ The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. ~~Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and~~ For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable ~~category,~~category.

~~provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection.~~ The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. ~~It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium.~~ When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00)."

SECTION 10.(b) G.S. 163-82.10(c) reads as rewritten:

"(c) Free Lists. ~~— Free lists of all registered voters in the county shall be provided in the following cases:~~

~~(1)~~ A county board ~~that maintains voter records on computer~~ shall provide, upon written request, one free list ~~to:~~of all the registered voters in the county to

~~a.~~ ~~The~~ the State chair of each political ~~party; party~~ and

~~b.~~ ~~The~~to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of

every even-numbered year, and once during the latter six calendar months of every even-numbered year.

~~(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.~~

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. ~~The free paper list to the county party chairs shall group voters by precinct.~~ All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the ~~discs or tapes~~ data in writing. ~~Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them.~~ As used in this section, "political party" means a political party as defined in G.S. 163-96."

SECTION 11.(a) G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~seventh~~ tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall conduct the canvass."

SECTION 11.(b) G.S. 163-182.7 reads as rewritten:

"§ **163-182.7. Ordering recounts.**

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first business day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the

difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second ~~Thursday after the election.~~ business day after the county canvass. If ~~on that Thursday~~ at that time the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. – The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced."

SECTION 12. G.S. 163-166.7(c) reads as rewritten:

"(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there.

(4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting

place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes."

SECTION 13. G.S. 163-182.15 is amended by adding a subsection to read:

"(d) Determining Results. – In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly."

SECTION 14. G.S. 163-82.14(d) reads as rewritten:

"(d) Change of Address. – A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:

a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;

b. A notice of cancellation received under G.S. 163-82.9; or

c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:

a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;

b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and

c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision to every registrant after every congressional election if

the county board has not confirmed the registrant's address by another means.

(3) Any registrant who is removed from the list of registered voters pursuant to this subsection shall be reinstated if the voter appears to vote and gives oral or written affirmation that the voter has not moved out of the county but has maintained residence continuously within the county. That person shall be allowed to vote as provided in G.S. 163-82.15(f)."

SECTION 15. G.S. 163-82.4 reads as rewritten:

"§ **163-82.4. Contents of application form.**

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(e) Correcting Registration Forms. – If the voter fails to answer the question set out in subdivision (1) of ~~this~~ subsection (d) of this section, the ~~person filling out the registration~~voter shall be notified of the omission and given the opportunity to complete the form ~~in a timely manner in order to be registered for the next election.~~at any time before casting a vote in the election on election day. If the voter corrects that omission within that time, the voter may vote in the election."

SECTION 16. G.S. 163-132.1 reads as rewritten:

"§ **163-132.1. Participation in ~~2000~~2010 Census Redistricting Data Program of the United States Bureau of the Census.**

(a) Purpose. – The State of North Carolina shall participate in the ~~2000~~2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, ~~including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases),~~ so that the State will receive ~~2000~~2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

~~(b) Phase I (Block Boundary Suggestion Program). – The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:~~

- ~~(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;~~
- ~~(2) Place those boundaries and features on maps deemed appropriate by the State Board;~~
- ~~(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and~~
- ~~(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.~~

~~(c) Phase II. – The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:~~

- ~~(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.~~
- ~~(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Director of the State Board of Elections, shall file with the Legislative Services Office the maps on which they have designated their precincts pursuant to this subsection.~~
- ~~(3) After examining the maps, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.~~

(4) If the Executive Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.

(5) If the Executive Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;

b. The Combined Reporting Unit consists only of contiguous territory;

c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and

e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Director under subdivision (3) of this subsection.

(7) The Executive Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts.

(1) Notwithstanding the provisions of G.S. 163-132.3, after the Executive Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A

~~of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey or a subsequent edition of that survey and ending January 2, 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:~~

~~a. Direct by resolution that the annexed area is automatically moved into the "city precinct", provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.~~

~~b. Adopt a resolution moving the precinct boundary to a line that the Census Bureau has indicated it will use as a 2000 block boundary.~~

~~(2) The Executive Director of the State Board of Elections may permit during the freeze a correction to a county's precincts as they were approved pursuant to subsection (c) of this section where one of the following sets of conditions is present:~~

~~a. A precinct was designated pursuant to subsection (c) inaccurately, and the United States Bureau of the Census agrees to include the corrected precinct on its database for the 2000 Census.~~

~~b. The boundary of a precinct designated pursuant to subsection (c) of this section was subsequently removed by the United States Bureau of the Census as an acceptable feature for a precinct line based upon a determination by the Bureau that the feature did not exist as shown, and the county board of elections agrees by resolution to an alternative boundary for the precinct on a feature the Bureau does find acceptable.~~

~~(3) The county board of elections may move a precinct line from a township line to another line the Census Bureau has indicated will be a 2000 block boundary if a Boundary and Annexation Survey issued during the freeze shows that the township line has moved to a location the county board of elections considers unsuitable. This subdivision does not apply if local legislation enacted by the General Assembly governs the relationship between a county's township lines and precinct lines.~~

~~(4) The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Director as being in compliance with the provisions of this subsection.~~

~~(d1) Right to Postpone Effective Date Until January 1, 2000. – A county board of elections may postpone the effective date of the precincts designated in Phase II until January 1, 2000.~~

~~(d2) Special Permission to Postpone Effective Date Until January 1, 2001. – The Executive Director may permit a county board of elections to postpone the effective date of precinct lines designated under Phase II until January 1, 2001, upon written application by the county board of elections, if the Executive Director finds both of the following:~~

~~(1) That the Phase II-designated lines would create a split precinct in 2000 for county commissioner, board of education, judicial, State legislative, or congressional district elections and that a split could be avoided by using the pre-Phase II precinct.~~

~~(2) That the county can provide reasonably reliable voter registration data for April and October of 2000 by the Phase II-designated precincts.~~

~~In granting an exception under this subsection, the Executive Director shall allow an exception only for the precincts that would result in splits and for any adjacent precincts for which pre-Phase II precincts must be used to avoid geographic overlap or discontinuity. Every county board of elections granted an exception under this subsection shall provide to the State Board of Elections voter registration data for April and October of 2000 by the Phase II-designated precincts.~~

~~(e) Municipal and Township Boundaries. – Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.~~

(f) Additional Rules. – In addition to the directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section."

SECTION 17. G.S. 163-182.12 reads as rewritten:

"§ **163-182.12. Authority of State Board of Elections over protests.**

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or ~~corruption.~~ corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval, the State Board of Elections may authorize a county board of elections to allow those voters to recast their ballots during a period of two weeks after the election. If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13."

SECTION 18. Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 2:01 p.m. on the 22nd day of September, 2005.

S.B. 393 Session Law 2005-429

AN ACT TO CLARIFY THE PUBLIC RECORDS LAWS WITH RESPECT TO ECONOMIC DEVELOPMENT AND TO REQUIRE THE DEPARTMENT OF REVENUE TO PUBLISH ANNUAL REPORTS REGARDING USE OF ECONOMIC DEVELOPMENT TAX INCENTIVES.

The General Assembly of North Carolina enacts:

PART I. GENERAL ECONOMIC DEVELOPMENT POLICIES

SECTION 1.1. G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects ~~in the State~~ may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project."

SECTION 1.2. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ **132-1.8. Economic development incentives.**

(a) Assumptions and Methodologies. – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This

description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed."

SECTION 1.3. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437.07. Economic development grant reporting.**

The Department of Commerce must publish on or before March 1 of each year the following information, itemized by business entity, for all grant programs administered by the Department that disbursed or awarded grant monies to businesses during the previous calendar year:

(1) The amount of grant monies awarded during the previous year.
(2) The amount of grant monies disbursed during the previous year.
(3) The amount of grant monies that were disbursed in earlier years to business entities that received grant monies during the previous year.
(4) The amount of potential future liability under the grant program.
(5) The number, type, and wage level of jobs created or retained during the previous year as a result of a grant.
(6) A description of any other financial assistance received during the previous year from all economic development incentive programs administered by the Department.
(7) Any amount recaptured from the business entity during the previous year for failure to comply with the grant agreement or applicable law."

PART II. SPECIFIC DISCLOSURE REQUIREMENTS

SECTION 2.1. G.S. 143B-437.55(c) is amended by adding two new subdivisions to read:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

…

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

…

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year."

SECTION 2.2. G.S. 105-129.6 reads as rewritten:

"(b) Reports. – The Department of Revenue shall publish by ~~April~~ May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of ~~claims~~ credits taken for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were generated and to which credits were ~~claimed.~~taken.

(3) The cost and enterprise tier area of machinery and equipment with respect to which credits were generated and to which credits were ~~claimed.~~taken.

(4) The number of new jobs created by businesses located in development zones, and the percentage of jobs at those locations that were filled by residents of the zones.

(5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were ~~claimed.~~taken.

(6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were ~~claimed.~~taken.

(7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were ~~claimed.~~taken."

SECTION 2.3. G.S. 105-129.19 reads as rewritten:

"§ **105-129.19. Reports.**

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information for the 12-month period ending the preceding ~~April 1:~~December 31:

(1) The number of taxpayers that ~~claimed~~ took the credits allowed in this Article.

(2) The cost of business property and renewable energy property with respect to which credits were ~~claimed.~~taken.

(2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

(3) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 2.4. G.S. 105-129.26(e) reads as rewritten:

(e) Reports. – The Department of Commerce and the Department of Revenue shall ~~report to the Fiscal Research Division of the General Assembly~~jointly publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding ~~April 1:~~December 31:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of ~~reinvestment credit refunded to each major recycling facility~~ credits taken under ~~G.S. 105-129.28.~~this Article."

SECTION 2.5. Article 3D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-129.38. Reports.**

The Department of Revenue must publish by May 1 of each year the following information for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 2.6. G.S. 105-129.44 reads as rewritten:

"§ **105-129.44. Report.**

The Department of Revenue must ~~report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly~~ publish by May 1 of each year the following information for the 12-month period ending the preceding ~~April 1:~~December 31:

(1) The number of taxpayers that ~~claimed~~ took the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was ~~claimed.~~taken.

(3) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 2.7. G.S. 105-129.54 reads as rewritten:

"§ **105-129.54. Reports.**

The Department of Revenue must ~~report to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly~~publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that ~~claimed~~ took a credit allowed in this Article, itemized by the categories of small business, low-tier, other, and university research.

(2) The amount of each credit ~~claimed~~ taken in each category.

(3) The total cost to the General Fund of the credits ~~claimed.~~taken."

SECTION 2.8. Article 3G of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-129.65A. Reports.**

The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers taking a credit allowed in this Article.

(2) The number of new jobs created with respect to which credits were taken.

(3) The amount of investment in real property and machinery and equipment with respect to which credits were taken.

(4) The total cost to the General Fund of the credits taken."

SECTION 2.9. G.S. 105-130.41 is amended by adding a new subsection to read:

"(c1) Report. – The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 2.10. G.S. 105-130.45 is amended by adding a new subsection to read:

"(f) Report. – The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of exports with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 2.11. G.S. 105-151.22 is amended by adding a new subsection to read:

"(c1) Report. – The Department of Revenue must publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 2.12. G.S. 105-164.14 is amended by adding a new subsection to read:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (g), (h), (i), and (j) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 2.13. G.S. 105-259(b)(27) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(27) To publish the information required under G.S. ~~105-129.6.~~105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.41, 105-130.45, 105-151.22, and 105-164.14."

PART III. ECONOMIC DEVELOPMENT OVERSIGHT COMMITTEE STUDY

SECTION 3. The Economic Development Oversight Committee shall study the issue of public disclosure as it relates to economic development efforts. Specifically, the Committee shall study ways of providing the public information about the employment levels, and any changes in employment levels, of businesses that receive economic development incentives from the State or local governments. The Committee may make an interim report on this study, including any recommendations for legislative proposals, to the 2006 Regular Session of the 2005 General Assembly and shall make a final report on this study to the 2007 General Assembly.

PART IV. EFFECTIVE DATE

SECTION 4. Sections 2.2 through 2.12 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 2:02 p.m. on the 22nd day of September, 2005.

H.B. 1128 **Session Law 2005-430**

AN ACT TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT; TO CLARIFY THE DEFINITION OF "CORPORATION"; AND TO PROVIDE TRAINING FOR TREASURERS OF POLITICAL COMMITTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars ($100.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by ~~check only.~~ a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by ~~check only.~~ a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars ($50.00) or less

may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.64(c) reads as rewritten:

"(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following ~~requirements, if they apply to that candidate:~~requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) ~~Qualified to receive votes on the ballot as a candidate for the office.~~Filed a valid notice of candidacy pursuant to Article 25 of this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support."

SECTION 5. G.S. 163-278.64(d) reads as rewritten:

"(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate ~~shall~~ may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period ~~no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or~~ the remaining money raised pursuant to subdivision (1) of this ~~subsection.~~ subsection and possible rescue funds received pursuant to G.S. 163-278.67. ~~Contributions a candidate may use to expend to that limit shall be~~

~~limited to qualifying contributions, and personal and family contributions permitted by subdivision (4) of this subsection.~~

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the ~~campaign and~~ campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed."

SECTION 6. G.S. 163-278.69(a) reads as rewritten:

"(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than ~~28~~14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election."

SECTION 7. G.S. 163-278.5 reads as rewritten:

"§ **163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for

federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 8. G.S. 163-278.23 reads as rewritten:

"§ **163-278.23. Duties of Executive Director of Board.**

The Executive Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, media, or other entity that may be required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Director of the Board of Elections shall issue written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, referendum committees, or other entities rely on and comply with the opinion of the Executive Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 9.(a) G.S. 163-278.81 reads as rewritten:

"§ **163-278.81. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity making the disbursement, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity making the disbursement.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the disbursement was made.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) ~~If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the~~ The names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure ~~date.~~date to a segregated bank account that consists of funds contributed solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

~~(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.~~"

SECTION 9.(b) G.S. 163-278.82 reads as rewritten:

"§ **163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.**

(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the

communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by ~~individuals~~ entities other than prohibited sources directly to that account.

(b) Direct or Indirect Disbursement. – An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. – Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced."

SECTION 9.(c) G.S. 163-278.91 reads as rewritten:

"§ **163-278.91. Disclosure of Electioneering Communications.**

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals who makes a disbursement for the direct costs of producing and transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity making the disbursement, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity making the disbursement.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the disbursement was made.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) ~~If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the~~ The names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure ~~date.~~date to a segregated bank account that consists of funds contributed solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

~~(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.~~"

SECTION 9.(d) G.S. 163-278.92 reads as rewritten:

"§ **163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.**

(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by ~~individuals~~ entities other than prohibited sources directly to that account.

(b) Direct or Indirect Disbursement. – An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. – Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced."

SECTION 10. G.S. 163-278.6(7) reads as rewritten:

"(7) The term "corporation" means any corporation ~~doing business in this State~~ established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina."

SECTION 10.1. G.S. 163-278.7 is amended by adding a new subsection to read:

"(f) The State Board of Elections shall provide training for every treasurer of a political committee, prior to the election in which the political committee is involved, as to the duties of the office. The State Board of Elections shall provide each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing training as to the duties of the office, and shall conduct regional seminars for in-person training. All such training shall be free of charge to the treasurer."

SECTION 11. This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 2:02 p.m. on the 22nd day of September, 2005.

S.B. 705 **Session Law 2005-431**

AN ACT TO PROVIDE FOR THE LICENSURE OF SUBSTANCE ABUSE PROFESSIONALS, TO ESTABLISH THE CREDENTIAL OF CERTIFIED CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL, AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR CREDENTIALS UPON THE REQUEST OF THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5C of Chapter 90 of the General Statutes reads as rewritten:

"Article 5C.

"North Carolina Substance Abuse ~~Professionals Certification~~Professional Practice Act.

"§ **90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, established by G.S. 90-113.32, is recognized as the ~~certifying~~ registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of ~~certified~~ credentialed substance abuse professionals, to provide for the establishment of standards for the education of ~~certified~~ credentialed substance abuse professionals, and to ensure the availability of ~~certified~~ credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of ~~Board-certified~~Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant ~~certification.~~registration, certification, or licensure.

"§~~**90-113.31. Definitions.**~~

~~The following definitions shall apply in this Article:~~

~~(1) Approved supervisor. — A person who provides supervision as required by the Board to persons applying for registration or certification as a substance abuse professional pursuant to this Article.~~

~~(1a) Board. — The North Carolina Substance Abuse Professional Certification Board.~~

~~(1b) Certified clinical addictions specialist. — A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.~~

~~(1c) Certified clinical supervisor. — A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.~~

~~(1d) Certified residential facility director. — A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.~~

~~(2) Certified substance abuse counselor. – A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.~~

~~(3) Repealed by S.L. 1997-492, s. 2.~~

~~(3a) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.~~

~~(4) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.~~

~~(4a) Credentialing body. – A board that licenses, certifies, or regulates a profession or practice.~~

~~(4b) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.~~

~~(4c) Human services field. – An area of study that focuses on the biological, psychological, and social aspects of human beings.~~

~~(4d) Repealed by Session Laws 1999-164, s. 1.~~

~~(5) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.~~

~~(6) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.~~

~~(6a) Registrant. – A person who has initiated a certification process to become a certified substance abuse counselor or a certified clinical addictions specialist pursuant to this Article and is authorized to provide DWI assessments pursuant to G.S. 122C-142.1.~~

~~(7) Substance abuse counseling. – The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.~~

~~(7a) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.~~

~~(8) Substance abuse professional. – A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~

"§ **90-113.31A. Definitions.**

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who, under supervision, provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Clinical addictions specialist intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of licensure as a clinical addictions specialist.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other

Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development

of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyles and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A person who successfully completes 300 hours of Board-approved supervised practical training and passes a written examination in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, clinical addictions specialist intern, licensed clinical addictions specialist, certified substance abuse residential facility director, or certified criminal justice addictions professional.

"§ **90-113.31B. Scope of practice.**

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions

that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse.

"§ **90-113.32. Board; composition; voting.**

(a) The Board is created as the ~~certifying~~ authority ~~for substance abuse counselors, substance abuse prevention consultants, clinical supervisors, clinical addictions specialists, and residential facility directors~~to credential substance abuse professionals in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals ~~certified~~ credentialed pursuant to this Article and elected by the ~~certified~~ credentialed professionals, at least two of

whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, appointed by the Chief of ~~Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services,~~the North Carolina Substance Abuse Single State Agency, at least one of whom ~~is from the Substance Abuse Services Section.~~administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms are due to expire. The certified or licensed professionals shall submit to the Committee all nominations beginning 90 days and ending ~~14~~ 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give

consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for ~~three-year~~four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, ~~the~~ that member may fulfill the remainder of ~~the member's~~his or her term on the Board.

"§ **90-113.33. Board; powers and duties.**

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke ~~certification~~ licensure, certification, or registration to practice in this State or reprimand or otherwise discipline ~~certificate~~ a license, certificate, or registration ~~holders~~ holder in this State. ~~Denial of an applicant's certification or registration or the granting of certification or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against those persons holding certificates or registrations. Disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.~~

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ ~~the professional and clerical~~and fix the compensation of personnel and legal counsel that the Board determines is necessary to carry out the provisions of this Article. The Board's employment of legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of ~~certification~~ certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

(10) Request that the Department of Justice conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 114-19.11A.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

"§ **90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.**

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person ~~certified~~ credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

"§ **90-113.34. Records to be kept; copies of records.**

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the ~~certificate of certification as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person.~~credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of ~~that record on~~Board records upon application to the Board and ~~upon~~ payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or employees as a result of investigations, inquiries, or interviews conducted in connection with ~~a certification~~awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional.

"§ **90-113.35. Disposition of funds.**

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board.

"§ **90-113.36. ~~Certificates of certification.~~Credentials.**

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for ~~certification.~~his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of ~~registration or~~registration, certification, or licensure, substantially equal to the requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees.

"~~§ 90-113.37. Renewal of certification; lapse; revival.~~

~~(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall complete 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.~~

~~(b) The Board shall establish the manner in which lapsed certification may be revived or extended.~~

"§ **90-113.37A. Renewal of credential; lapse.**

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended.

"§ **90-113.38. Maximums for certain fees.**

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, ~~or~~ substance abuse residential facility ~~director~~ director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of ~~certification~~ licensure for a clinical addictions specialist pursuant to deemed status ~~may~~ shall not exceed one hundred fifty dollars ($150.00). The fee to renew a ~~certificate may~~license for a clinical addictions

specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a ~~certificate of certification~~license for a clinical addictions specialist pursuant to all other procedures authorized by this Article ~~may~~ shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the ~~certificate may~~license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall ~~be~~ not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall ~~be~~ not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees ~~required under~~authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee ~~of~~ not to exceed twenty-five dollars ($25.00) to obtain a written verification ~~of certification~~or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional.

"§ **90-113.39. Standards for ~~certification.~~credentials.**

The Board shall establish standards ~~for certification of~~to credential substance abuse professionals. The ~~certification~~ credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required ~~standards separately from its rules so as to provide easy access to the~~ standards.

"§ **90-113.40. Requirements for ~~certification.~~certification and licensure.**

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty

percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical ~~Training and~~Training, has provided a Board-approved supervision contract between the applicant and an ~~approved supervisor.~~applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed ~~either~~ a total of 6,000 hours of supervised experience in the field, whether paid or ~~volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of ~~10,000~~6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has ~~successfully completed~~obtained a passing score on a written ~~examination and~~examination. An applicant for certification as a substance abuse counselor must also obtain a passing score on an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the ~~12 core functions~~Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's ~~recertification~~ renewal as a substance abuse ~~counselor~~counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) ~~Successfully completes~~Obtains a passing score on a written examination administered by the Board.

A person who practices as a certified clinical supervisor in addition to practicing as a certified substance abuse counselor shall be exempt from the practice supervision contract requirement.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.

(3) Submits proof of ~~certification~~ credentialing as a certified substance abuse ~~counselor or a certified~~counselor, a licensed clinical addictions ~~specialist.~~specialist, or certification or licensure through an organization granted deemed status by the Board.

(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a ~~certificate certifying~~license credentialing an applicant as a "~~Certified~~ Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through ~~(5)~~(5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training ~~as described~~from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.

f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an ~~approved~~ applicant supervisor.

(2) Criteria B. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from ~~certified~~ either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from ~~certified~~ licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse ~~Certified~~ Residential Facility Director" ~~if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section,~~ if the applicant:

(1) Has been ~~certified~~ credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a 'Certified Criminal Justice Addictions Professional', with the acronym 'CCJP', if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, 'IC&RC/AODA, Inc.,' criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty

percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school degree or GED, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services, or any combination of these services, and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) ~~Effective until January 1, 2001, any person who is certified as a certified clinical supervisor or who functions by his or her job description as a certified clinical supervisor shall be qualified to supervise applicants for certified clinical supervisor.~~

~~Effective from January 1, 2001 until January 1, 2003, only a person who is certified both as a certified clinical supervisor and as a certified clinical addictions specialist shall be qualified to supervise applicants for certified clinical addictions specialist, but a person who is certified as a certified clinical supervisor or a certified clinical addictions specialist shall be qualified to supervise an applicant for certification as a certified substance abuse counselor.~~

Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for ~~certified~~ licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4).

"§ **90-113.40A. Requirements for registration.**

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an ~~approved~~ applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for ~~certification~~ credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained ~~certification~~ a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration.

"§ **90-113.40B. ~~Approved~~ Applicant supervision.**

The Board shall designate a person as an ~~approved~~ applicant supervisor of individuals applying for ~~registration or certification~~registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

~~(3) A certified clinical supervisor, a clinical supervisor intern, a certified clinical addictions specialist, or a certified substance abuse counselor shall supervise a registrant who provides DWI assessments.~~

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for ~~certification~~ licensure as a ~~certified~~ licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern.

"§ **90-113.41. Examination.**

(a) Except for those individuals applying for ~~certification~~ licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be ~~examined~~ tested in an examination ~~that is consistent with the examination requirements of~~developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies.

"§ **90-113.41A. Deemed status.**

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse ~~certification~~ credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.
c. Individual, group, and family counseling.
d. Treatment, planning, reporting, and record keeping.
e. Crisis intervention.
f. Case management and treatment resources.
g. Ethics, legal issues, and confidentiality.
h. Psychological, emotional, personality, and developmental issues.
i. ~~Coexisting~~ Co-occurring physical and mental disabilities.
j. Special population issues, including age, gender, race, ethnicity, and health status.
k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for ~~certification as a certified clinical addictions specialist.~~the credential of licensed clinical addictions specialist.

(d) The Standards ~~and Credentialing~~ Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a professional discipline's credential may be discontinued by a two-thirds vote of the Board.

"§ **90-113.41B. Change of name or address.**

Every person licensed, ~~certified~~ certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place.

"§ **90-113.42. ~~Exemptions.~~Violations; exemptions.**

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. ~~Accordingly, this~~

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while

rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals ~~certified~~ registered, certified, or licensed under this Article may use the title ~~certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director.~~ 'Certified Substance Abuse Counselor', 'Certified Substance Abuse Prevention Consultant', 'Certified Clinical Supervisor', 'Licensed Clinical Addictions Specialist', 'Certified Substance Abuse Residential Facility Director', 'Certified Criminal Justice Addictions Professional', 'Substance Abuse Counselor Intern', 'Clinical Addictions Specialist Intern', 'Clinical Supervisor Intern', or 'Registrant'.

"§ **90-113.43. Illegal practice; misdemeanor penalty.**

Except as otherwise authorized in this Article, no person shall:

(1) ~~Practice,~~Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified ~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director~~substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified or licensed clinical addictions specialist, clinical addictions specialist intern, substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse prevention consultant, or registrant without first having obtained a certificate of ~~certification~~ registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a ~~certified~~ registrant, substance abuse counselor, ~~certified~~ substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, or clinical addictions specialist intern unless this person is ~~certified~~ registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, certified criminal justice addictions professional, or certified substance abuse residential facility director with a revoked, lapsed, or suspended ~~certification.~~certification or license.

(4) Aid, abet, or assist any ~~uncertified~~ person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, registrant, substance abuse counselor intern, clinical addictions specialist, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified

clinical supervisor, ~~certified~~ licensed clinical addictions specialist, ~~or~~ certified substance abuse residential facility ~~director~~ director, substance abuse counselor intern, clinical addictions specialist intern, or clinical supervisor intern unless that person is ~~certified~~ registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"§ **90-113.44. Grounds for disciplinary action.**

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain ~~certification~~ licensure, certification, or registration or renewal of ~~certification~~ licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is ~~affected, until proof of rehabilitation can be established.~~affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal ~~narcotic or controlled substance law, until proof of rehabilitation can be established.~~law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral ~~turpitude, until proof of rehabilitation can be established.~~turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of ~~certification~~ licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established.~~established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence ~~in the practice of substance abuse counseling, substance abuse prevention consulting, clinical supervising, or in serving as a clinical addictions specialist, residential facility director, or a registrant.~~while serving as a substance abuse professional, intern, or registrant.

~~(8) Practicing as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director~~

~~without a valid certificate or practicing as a registrant without a valid registration.~~

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional.

"§ **90-113.45. Enjoining illegal practices.**

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides.

"§ **90-113.46. Application of requirements of Article.**

All persons ~~certified~~ credentialed by the North Carolina Substance Abuse Professional ~~Certification~~ Practice Board, Inc., as of July 1, 1994, shall be ~~certified~~ credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it.

"**§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.**

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Justice for providing this service, and any additional

information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.11A. Criminal record checks of applicants for registration, certification, or licensure as a substance abuse professional.**

The Department of Justice may provide to the North Carolina Substance Abuse Professional Practice Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for registration, certification, or licensure pursuant to Article 5C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. All members serving on the North Carolina Substance Abuse Professional Practice Board on the effective date of this act shall complete their

current three-year terms. Upon completion of their terms, newly appointed or elected members of the Board shall serve four-year terms pursuant to G.S. 90-113.33, as enacted in Section 1 of this act.

SECTION 4. Notwithstanding G.S. 90-113.40(d1), as enacted by Section 1 of this act, the North Carolina Substance Abuse Professional Practice Board may certify a person as a certified criminal justice addictions professional during a limited period of 90 days from the date this act becomes effective and the credential is approved by the IC&RC/AODA, Inc., if the applicant qualifies based on experience providing services to clients or offenders exhibiting substance abuse disorders and is working in a program determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. In addition to meeting the requirements of G.S. 90-113.40(a)(1) through (5a), the person shall do the following:

(1) Provide two letters recommending certification from a current or former peer who functions in substantially the same professional capacity as determined by the Board.

(2) Provide one letter recommending certification from a person currently supervising or who has supervised the applicant within the previous five years attesting to the applicant's competency in the fields of substance abuse and criminal justice.

(3) Pay the criminal justice addictions professional certification fee for certification not to exceed one hundred fifty dollars ($150.00).

(4) Provide one of the following:

a. A high school diploma or a high school equivalency certificate, documentation of eight years or 16,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

b. An associate degree and documentation of six years or 12,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

c. A bachelors degree in the human services field with four years or 8,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in at least one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

d. A masters degree or above in the human services field with two years or 4,000 hours of supervised work experience providing direct service to clients or offenders determined by the Board to be integrally involved in the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections.

(5) Provide documentation of at least 270 clock hours of Board-approved education and 300 hours of Board-approved supervised practical training, both in the International Certification & Reciprocity

Consortium/Alcohol and Other Drug Abuse, Incorporated, criminal justice addiction professional performance domains.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 2:03 p.m. on the 22nd day of September, 2005.

S.B. 208 **Session Law 2005-432**

AN ACT AMENDING CERTAIN LAWS RELATING TO THE NORTH CAROLINA OCCUPATIONAL THERAPY PRACTICE ACT AND AUTHORIZING THE NORTH CAROLINA BOARD OF OCCUPATIONAL THERAPY TO RAISE THE FEE FOR A LIMITED PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.66 reads as rewritten:

"§ **90-270.66. Declaration of purpose.**

The North Carolina Occupational Therapy Practice Act is enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional ~~care~~ services and conduct on the part of occupational therapists and occupational ~~therapist~~ therapy assistants, to provide for the establishment of ~~standards of education,~~licensure requirements, and to insure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this Article to provide for the regulation of persons offering occupational therapy services to the public."

SECTION 2. G.S. 90-270.67 reads as rewritten:

"§ **90-270.67. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

~~(1)~~(1a) ~~"Board" means the~~Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) ~~"Occupational therapist" means an~~Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) ~~"Occupational therapist assistant" means an~~Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) "Occupational therapy" means a health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic

devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) ~~"Person" means any~~Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 3. G.S. 90-270.68 reads as rewritten:

"§ **90-270.68. Establishment of Board, ~~terms of members,~~terms, vacancies, removal, meetings, compensation.**

(a) Establishment of Board. – The North Carolina Board of Occupational Therapy is created. The Board shall ~~have six members. All members shall be~~consist of seven members who are appointed by the Governor and ~~shall be~~are residents of this State at the time of and during their ~~appointment.~~appointment, as follows:

(1) Three members shall be occupational therapists and one member shall be an occupational ~~therapist assistant; each~~therapy assistant. Each of these members shall be licensed to practice in North Carolina and have practiced, taught, or engaged in research in occupational therapy for at least three of the five years immediately preceding appointment to the Board.

(2) ~~The fifth board~~One member shall be a physician in good standing with the North Carolina Medical Board and licensed by and registered with the North Carolina Medical Board to practice ~~medicine; and~~medicine in this State.

(3) ~~the sixth board~~One member shall represent the public at large and shall be a person who is not a health care provider licensed under this ~~Chapter.~~Chapter or the spouse of a licensed health care provider.

(4) One member shall be a counselor, educator, or school-based professional certified or licensed under North Carolina law who is employed in the North Carolina public school system and is not an occupational therapist or an occupational therapy assistant.

The ~~medical doctor, occupational therapists, and occupational therapist assistant~~occupational therapist members and the occupational therapy assistant member shall be ~~appointed by the Governor from a list compiled~~nominated by the North Carolina Occupational Therapy Association, Inc., following the use of a ~~nomination~~ procedure made available to all occupational therapists and occupational ~~therapist~~ therapy assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association shall give consideration to geographic distribution, clinical specialty, and other factors that will promote representation of all aspects of occupational therapy practice. The records of the nomination procedures shall be filed with the Board and made available for a period of six months following nomination for reasonable inspection by any licensed practitioner of occupational therapy.

The physician member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina Medical Society. The counselor, educator, or school-based professional member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina School Counselors Association.

(b) Terms. – Members of the Board shall serve four-year staggered terms. No member shall serve more than two consecutive four-year terms, unless a member is appointed to fill a vacancy for an unexpired term, then that member may complete the unexpired term and serve one additional four-year term.

(c) Vacancies. – In the event ~~that~~ a member of the Board cannot complete a term of office, the vacancy shall be filled by appointment by the Governor, in accordance with the procedures set forth in this section, for the remainder of the unexpired term. Vacancies shall be filled by the Governor within 45 days of receipt of the nominations from the North Carolina Occupational Therapy Association, Inc., or, in the case of public members, within 45 days of the receipt of notice of vacancy.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in Board business until the charges are resolved.

(e) Meetings. – Each year the Board shall meet and designate a ~~chairman~~ chairperson, a vice-chairperson, and a secretary-treasurer from among its members. The Board may hold additional meetings upon call of the ~~chairman~~ chairperson or any two board members. A majority of the Board membership shall constitute a quorum.

(f) Compensation. – Members of the Board shall receive no compensation for their services, but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5."

SECTION 4. G.S. 90-270.69 reads as rewritten:

"§ **90-270.69. Powers and duties of the Board.**

The Board shall have the following powers and duties:

(1) ~~Examine~~ Establish and determine the qualifications and fitness of applicants for licensure to practice occupational therapy in this ~~State;~~State.

(2) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this ~~Article;~~Article.

(2a) Communicate disciplinary actions to relevant State and federal authorities and to other state occupational therapy licensing authorities.

(3) Issue and renew, and deny, suspend, revoke or refuse to issue or renew any license under this ~~Article;~~Article.

(4) Adopt, amend, or repeal any reasonable rules or regulations necessary to carry out the purposes of this Article, including but not limited to rules establishing ethical standards of ~~practice;~~practice.

(5) Employ professional, clerical, investigative or special personnel necessary to carry out the provisions of this Article, and purchase or rent office space, equipment and ~~supplies;~~supplies.

(6) Adopt a seal by which it shall authenticate its proceedings, official records, and ~~licenses;~~licenses.

(7) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this ~~Article;~~Article.

(8) Establish reasonable fees for ~~applications for examination; initial, provisional,~~applications, limited permits, initial and renewal ~~licenses;~~licenses, and other services provided by the ~~Board;~~Board.

(9) Submit an annual report to the Governor and General Assembly of all its official actions during the preceding year, together with any recommendations and findings regarding improvement of the profession of occupational ~~therapy;~~therapy.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules and regulations established by the ~~Board;~~Board.

(11) ~~Approve educational curricula and field work experience accredited by the American Medical Association and American Occupational Therapy Association for persons seeking licensure under this Article.~~Conduct a training program as needed for new Board members designed to familiarize new members with their duties."

SECTION 5. G.S. 90-270.70 reads as rewritten:

"§ **90-270.70. Requirements for licensure.**

(a) Any individual who desires to be licensed as an occupational therapist or occupational ~~therapist~~ therapy assistant shall file a written application with the Board on forms provided by the Board, showing to the satisfaction of the Board that the applicant:

(1) Is of good moral character; and

(2) Has passed an examination approved by the Board as provided in this Article.

Applicants for licensure as an occupational therapist must also have successfully completed an accredited occupational therapy educational curriculum and the required supervised ~~field work experience of at least six months' duration.~~fieldwork as determined by the Board. Applicants for licensure as an occupational ~~therapist~~ therapy assistant must also have successfully completed an accredited occupational therapy assistant educational curriculum and the required supervised ~~field work experience of at least two months' duration.~~fieldwork as determined by the Board.

(b) Occupational therapists who are trained outside of the United States and its territories shall satisfy the examination and educational requirements as stated in subsection (a) of this section. The Board shall require these applicants to meet examination eligibility requirements as established by the credentialing body recognized by the Board before taking the examination."

SECTION 6. G.S. 90-270.71 is repealed.

SECTION 7. G.S. 90-270.72 reads as rewritten:

"§ **90-270.72. Exemption from requirements.**

~~(a) The Board shall waive the examination, education, and field work requirements of G.S. 90-270.70 and shall grant a license to any applicant who presents evidence satisfactory to the Board that he or she has been engaged in the practice of occupational therapy as an occupational therapist or occupational therapist assistant before September 1, 1984. Proof of such actual practice shall be presented to the Board as established by regulation. To qualify for exemption under this section, the applicant shall file an application for licensure no later than September 1, 1985.~~

~~(b)~~ The Board may ~~grant a license without examination to any applicant who~~ exempt an applicant from certain licensure requirements if the applicant presents proof satisfactory to the Board of current licensure as an occupational therapist or occupational ~~therapist~~ therapy assistant in another state or the District of Columbia, Puerto Rico, or Guam, provided the other jurisdiction's licensure standards are considered by the Board to be substantially equivalent to or higher than those prescribed in this Article."

SECTION 8. G.S. 90-270.73 reads as rewritten:

"§ **90-270.73. Issuance of license.**

(a) The Board shall issue a license to any individual who meets the requirements of this Article upon payment of the license fee prescribed in G.S. 90-270.77.

(b) Any individual licensed as an occupational therapist under this Article may use the words "occupational therapist" and may use the letters "O.T." or ~~"O.T.R./L."~~ "O.T./L." in connection with his or her name or place of business.

(c) Any individual licensed as an occupational ~~therapist~~ therapy assistant under this Article may use the words "occupational ~~therapist~~ therapy assistant" and may use the ~~letter~~ letters "O.T.A." or ~~"C.O.T.A./L."~~ "O.T.A./L." in connection with his or her name or place of business.

(d) Any individual possessing a limited permit to practice occupational therapy may use the words "occupational therapy limited permittee" or "occupational therapy assistant limited permittee" and may use the letters "O.T./L.P." or "O.T.A./L.P." in connection with his or her name or place of business."

SECTION 9. G.S. 90-270.74 reads as rewritten:

"§ **90-270.74. ~~Provisional licenses.~~Limited permits.**

The Board may grant a ~~provisional license for a period not exceeding nine months to any~~limited permit to an individual who has successfully completed the educational and ~~field work~~ fieldwork ~~experience~~ requirements ~~and has made application to take the examination~~ for examination but has not yet taken or received the results of the examination required under G.S. 90-270.70. A ~~provisional license~~limited permit shall allow the individual to practice as an occupational therapist or occupational ~~therapist~~ therapy assistant under the supervision of an occupational therapist licensed in this ~~State and shall be valid until revoked by the Board. A provisional license~~State. A limited permit shall expire after 120 days, when the individual is issued a license under G.S. 90-270.73, or if the individual is notified that he or she did not pass the examination, whichever occurs ~~shall not be issued to applicant who has failed the examination in this State or another jurisdiction.~~first. The provisions of this section shall expire October 1, 2007."

SECTION 10. G.S. 90-270.75(a) reads as rewritten:

"(a) Licenses issued under this Article shall be subject to annual renewal upon completion of ~~such~~ continuing education and competency requirements as may be required by the Board, upon the payment of a renewal fee specified under G.S. 90-270.77 and in compliance with this Article, and shall expire unless renewed in the manner prescribed by the Board. The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with G.S. 90-270.77, but no such late renewal may be granted more than five years after a license expires."

SECTION 11. G.S. 90-270.76 reads as rewritten:

"§ **90-270.76. Suspension, revocation and refusal to renew license.**

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

(1) ~~Employment of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license, or the renewal thereof;~~Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.

(2) ~~Conviction of or a plea of guilty or nolo contendere to any crime involving moral turpitude;~~Engaging in unprofessional conduct pursuant to rules established by the Board or violating the Code of Ethics adopted and published by the Board.

(3) ~~Adjudication of insanity or incompetency, until proof of recovery from the condition can be established;~~Having been convicted of or pleaded

guilty or nolo contendere to a crime involving moral turpitude or any crime which indicates that the occupational therapist or occupational therapy assistant is unfit or incompetent to practice occupational therapy or that the occupational therapist or occupational therapy assistant has deceived or defrauded the public.

(4) Engaging in any act or practice violative of any of the provisions of this Article or any rule or regulation adopted by the Board ~~hereunder,~~ or aiding, abetting or assisting any person in such a ~~violation;~~violation.

(5) Committing an act or acts of malpractice, gross negligence or incompetence in the practice of occupational ~~therapy;~~therapy.

(6) Practicing as a licensed occupational therapist or occupational ~~therapist~~ therapy assistant without a current ~~license;~~license.

(7) Engaging in conduct that could result in harm or injury to the public.

(8) Having an occupational therapy license revoked or suspended or other disciplinary action taken whether in this State or another jurisdiction.

(9) Being unfit or incompetent to practice occupational therapy by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(b) ~~Such~~ The denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with G.S. Chapter 150B and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year."

SECTION 12. G.S. 90-270.77 reads as rewritten:

"§ **90-270.77. Fees.**

The Board shall adopt and publish, in the manner established by its rules and regulations, fees reasonably necessary to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed ten dollars ~~($10.00);~~($10.00).

(2) For ~~examination, reexamination, or~~ issuance of ~~a license~~ an initial license, a fee not to exceed one hundred dollars ~~($100.00);~~($100.00).

(3) For the renewal of a license, a fee not to exceed fifty dollars ~~($50.00);~~($50.00).

(4) For the late renewal of a license, a fee not to exceed fifty dollars ~~($50.00);~~($50.00).

(5) For a ~~provisional license,~~limited permit, a fee not to exceed ~~thirty-five dollars ($35.00); and~~fifty dollars ($50.00). This fee shall expire October 1, 2007.

(6) For copies of Board rules and licensure standards, charges not ~~exceeding~~ to exceed the actual cost of printing and mailing."

SECTION 13. G.S. 90-270.78 reads as rewritten:

"§ **90-270.78. False representation of license prohibited.**

(a) It is unlawful for any person who is not licensed in accordance with this Article or whose license has been suspended, revoked or not renewed by the Board to:

(1) Engage in the practice of occupational ~~therapy;~~therapy.

(2) Orally, in writing, in print or by sign, or in any other manner, directly or by implication, represent that he or she is engaging in occupational ~~therapy; or~~therapy.

(3) Use in connection with his or her name or place of business the words ~~"occupational therapist" or "occupational therapist assistant";~~"occupational therapist", "occupational therapy assistant", "occupational therapist limited permittee", or "occupational therapy assistant limited permittee", or the letters "O.T.", ~~"O.T.R./L.",~~ "O.T./L.", "O.T.A.", ~~or "C.O.T.A./L."~~ "O.T.A./L.", "O.T./L.P.", or 'O.T.A./L.P.' or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational ~~therapist or~~therapist, occupational ~~therapist assistant.~~therapy assistant, occupational therapist limited permittee, or occupational therapy assistant limited permittee.

(b) Any person who resides in another state or foreign country and who, by use of electronic or other medium, performs any of the acts described as the practice of occupational therapy pursuant to this Article, but is not licensed pursuant to this Article, shall be regarded as practicing occupational therapy without a North Carolina license and is subject to the provisions of this Article and appropriate regulation by the Board."

SECTION 14. Article 18D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ **90-270.80A. Civil penalties, disciplinary costs.**

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Board.

(d) Costs. – The Board may assess the costs of disciplinary actions against any person found to be in violation of this Article or rules adopted by the Board."

SECTION 15. G.S. 90-270.81 reads as rewritten:

"§ **90-270.81. Persons and practices not affected.**

Nothing in this Article shall be construed to prevent or restrict:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as the person does not represent himself or herself as an occupational therapist or occupational ~~therapist assistant;~~therapy assistant.

(2) Any person employed as an occupational therapist or occupational ~~therapist~~ therapy assistant by the government of the United States, if

he or she provides occupational therapy solely under the direction or control of the organization by which he or she is ~~employed;~~employed.

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if ~~such~~ the activities and services constitute a part of a supervised course of study and if the person is designated by a title which clearly indicates his or her status as a student or ~~trainee;~~trainee.

(4) Any person fulfilling the supervised ~~field work~~fieldwork experience required for licensure under this Article if the person is designated by a ~~title which~~title, which clearly indicates his or her status as a student or ~~trainee;~~trainee.

(5) Occupational therapists or occupational ~~therapist~~ therapy assistants licensed in other jurisdictions who are ~~teaching~~ consulting, teaching, or participating in special occupational therapy education projects, demonstrations or courses in this State, provided their evaluation and treatment of patients is minimal.

(6) The practice of occupational therapy by an occupational therapist or occupational therapy assistant licensed in another jurisdiction who comes into this State, whether in person or by use of any electronic or other medium, on an irregular basis, to consult with a North Carolina licensed occupational therapist or occupational therapy assistant or to consult with faculty at an academic facility about education and training. This shall not apply to occupational therapists or occupational therapy assistants residing in a neighboring state and regularly practicing in this State."

SECTION 16. All members serving on the North Carolina Board of Occupational Therapy on the effective date of this act shall complete their current terms. Upon completion of their current terms, the occupational therapist members shall serve one additional term of either three or four years as follows: the occupational therapist member who served the longest may serve an additional three-year term; the other two occupational therapist members, the occupational therapy assistant member, and the physician member shall be eligible to serve one additional four-year term. The Governor shall appoint a new public member to serve a four-year term. The Governor shall also appoint the counselor, educator, or school-based professional member for a four-year term pursuant to G.S. 90-270.68(a)(4), as enacted in Section 4 of this act, to begin October 1, 2005. Members appointed thereafter shall serve four-year terms.

SECTION 17. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 2:06 p.m. on the 22nd day of September, 2005.

H.B. 787 **Session Law 2005-433**

AN ACT TO REQUIRE THE PAYMENT OF DELINQUENT TAXES IN ASHE COUNTY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO DELINQUENT TAXES; TO CLARIFY PAYMENT OF DELINQUENT TAXES IN ALLEGHANY COUNTY BEFORE RECORDING DEEDS

CONVEYING PROPERTY SUBJECT TO DELINQUENT TAXES; TO PROVIDE THAT GREENE, LENOIR, IREDELL, WAYNE, AND YADKIN COUNTIES MAY PROHIBIT ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER; TO CLARIFY THE AREA COVERED BY THE NO-WAKE ZONE ESTABLISHED FOR THE TOWN OF CEDAR POINT; TO PROHIBIT HUNTING ON THE LAND OF ANOTHER WITHOUT THE WRITTEN PERMISSION OF THE OWNER OR LESSEE IN CHOWAN COUNTY; AND TO AUTHORIZE THE TOWN OF KERNERSVILLE TO CONVEY CERTAIN PROPERTY BY PRIVATE SALE OR TRADE; TO ALLOW DOT TO SIGN A VOLUNTARY ANNEXATION PETITION WITH THE TOWN OF KNIGHTDALE; TO ALLOW COUNTIES WITH NO INCORPORATED MUNICIPALITIES LOCATED PRIMARILY WITHIN THE COUNTY TO EXERCISE MOST MUNICIPAL FUNCTIONS; AND TO AMEND THE CHARTER OF THE TOWN OF PILOT MOUNTAIN TO ALLOW THE TOWN MANAGER TO APPOINT THE TOWN CLERK AND THE TREASURER.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 1 of Chapter 657 of the 1993 Session Laws, as amended by Section 9 of S.L. 1997-410, reads as rewritten:

"**Section 1.(a)** The ~~Registers~~ Register of Deeds of ~~Alleghany and~~ Ashe ~~Counties~~County shall not receive for recordation any deed unless the deed is accompanied by a certificate from the Ashe County Tax Collector and any municipal tax collector, where applicable, to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid.

"**Section 1.(b)** The Register of Deeds of Alleghany County shall not receive for recordation any deed unless the deed is accompanied by a certificate from the County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

SECTION 1.(b) This section applies to Alleghany County and Ashe County only.

SECTION 2.(a) G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to ~~Alleghany,~~ Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Rockingham, Rowan, Rutherford, Stanly, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2.(b) This section applies to Alleghany County only.

SECTION 3.(a) G.S. 153A-357 is amended by adding a new subsection to read:

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

SECTION 3.(b) This section applies to Greene, Lenoir, Iredell, Wayne, and Yadkin Counties only.

SECTION 4. Section 1 of S.L. 2001-65 reads as rewritten:

"**SECTION 1.** It is unlawful to operate a vessel at greater than no-wake speed on the waters of the Intracoastal Waterway ~~within the corporate limits of~~ between Waterway Marker 44 and Waterway Marker 46B in the area abutting the Town of Cedar ~~Point and the Town's extraterritorial jurisdiction under G.S. 160A-360.~~Point."

SECTION 5.(a) Section 2 of Chapter 868 of the 1986 Session Laws, as amended by S.L. 2004-60, reads as rewritten:

"**Sec. 2.** It is unlawful to ~~hunt with or~~ hunt, take, or kill a wild animal or wild bird, or to attempt to hunt, take, or kill a wild animal or wild bird on the land of another unless the hunter has, on his or her person, the written permission of the owner or lessee of the land. It is unlawful to possess any center-fire rifle on the land of another or to discharge any center-fire rifle on, over, or across the land of another unless the hunter has, on his or her person, the written permission of the owner or lessee of the land. The written permission required by this section shall be dated and may be valid for no more than one year."

SECTION 5.(b) This section applies to Chowan County only.

SECTION 6.(a) Section 2(b) of S.L. 2004-60 reads as rewritten:

"**SECTION 2.(b)** Violation of this section is punishable as ~~a Class 3 misdemeanor.~~ provided for in G.S. 113-135.1(a)."

SECTION 6.(b) This section applies to Chowan County only.

SECTION 7.(a) Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Kernersville may convey by private negotiation and sale or trade, with or without monetary consideration, any or all of its right, title, and interest in the following described properties:

PROPERTY I

That property consisting of approximately 30 acres, more or less, as described in Forsyth County Registry Deed Book 764, at page 292; and more particularly described as follows:

"Being all of that certain 30.028 acre tract of land lying in Abbotts Creek Township, Forsyth County, North Carolina; and bounded by natural boundaries and/or lands owned by and/or in possession of persons, as follows: on the north and east by Stephen E. Dotson, on the south by Edith B. Schulz and Mary B. Shropshire, and on the west by Arbor Development Corporation; as tract being particularly described by courses (according to the North Carolina Grid System as determined by solar observations) and distances according to a survey and plat prepared by the Town of Kernersville Engineering Department, Division of Public Works, under the seal of H. Stephen Bowers Professional Land Surveyor No. L-2455, dated May 2, 1986, and revised April 5, 2005, to which reference is hereby made, as follows:

BEGINNING at a 1" outside diameter found existing iron pipe, 3" high, the northwesterly corner of Mary Ruth B. Shropshire and husband Donald G. Shropshire (see Deed Book 1840 Page 622 of the Forsyth County Registry), in the easterly line of Arbor Development Corporation (see Deed Book 1513 Page 806 of said Registry); said iron pipe having N.C. grid coordinates of North 844,495.89 (feet) and East 1,680,885.63 (feet) as per the North American Datum of 1983, as taken from survey from North Carolina Geodetic Station and horizontal control monument "UNION CROSS;" thence with the easterly line of said Arbor Development Corporation North 1 Degrees, 27 Minutes, 35 Seconds East, 1387.76 feet, to a 1 ¼" outside diameter found existing iron pipe, 6" high, the southwesterly corner of Stephen E. Dotson and wife Sandra C. Dotson (see Deed Book 1689 Page 224 of said Registry); thence with the southerly line of said Stephen E. Dotson and wife Sandra C. Dotson South 88 Degrees, 30 Minutes, 30

Seconds East, 923.08 feet, to a 1 ¼" outside diameter found existing iron pipe, 5" high, the northwesterly corner of other lands of said Stephen E. Dotson and wife Sandra C. Dotson (see now Deed Book 2452 Page 4397, "TRACT 1," of said Registry); thence with the westerly line of said Stephen E. Dotson and wife Sandra C. Dotson South 1 Degrees, 28 Minutes, 30 Seconds West, 1446.89 feet, to a found existing stone with new cut cross, 5" by 12 top, 6" high, painted yellow, the northwesterly and northeasterly corner, respectively, of Donald Davis and wife Helen S. Davis (see Deed Book 1664 Page 981 of said Registry), and Edith B. Schulz and W. Bradford Schulz co-trustees or successor trustees for the benefit of Edith B. Schulz Living Trust (see Deed Book 1961 Page 2962 of said Registry); thence with the northerly line of said Edith B. Schulz and falling in with the northerly line of said Mary Ruth B. Shropshire and husband Donald G. Shropshire North 84 Degrees, 50 Minutes, 30 Seconds West, 924.62 feet, to the BEGINNING said 1" outside diameter found existing iron pipe, 3" high.

FOR REFERENCE SEE: that deed recorded in Deed Book 764 at Page 292 of the Forsyth County Registry;

The above described 30.028 acre tract is generally known and designated as being all of tax lot 1 of tax block 5629 of Forsyth County Tax Maps as presently constituted."

PROPERTY II

That property consisting of approximately 1.566 acres more or less and denoted as Lot Two on the plat recorded in Plat Book 48, Page 116 of the Forsyth County Registry.

SECTION 7.(b) The Town of Kernersville shall use the property described in subsection (a) of this section for a public purpose that stimulates the local economy and promotes business in the Town of Kernersville, including the location of new or expanded service or industrial facilities, manufacturing, assembly, fabrication, processing, warehousing, research and development, office use or use as a shell business, or a new business incubator. The Town of Kernersville may lease, subdivide, mortgage, sell, trade, or convey the property for any public purpose authorized in this act.

SECTION 7.(c) This section applies to the Town of Kernersville only.

SECTION 8.(a) The District Engineer for the North Carolina Department of Transportation is authorized to sign a voluntary annexation petition with the Town of Knightdale for the annexation of State right-of-way. Annexed areas must be within the established Utility Service Area of the Town. The annexation is upon the condition that the Town provides mowing along the right-of-way or median of such highway to be annexed under the normal terms and conditions established by the Department.

SECTION 8.(b) This section applies only to the Town of Knightdale.

SECTION 9. G.S. 160A-58.1(b)(5), as amended by S.L. 2005-71, 2005-79, and S.L. 2005-173 reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

…

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury,

Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallote, Spencer, Surf City, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

SECTION 10.(a) Article 24 of Chapter 153A of the General Statutes, as enacted by S.L. 2005-35, reads as rewritten:

"Article 24.

"Unified Government.

"§ **153A-471. Unified government.**

(a) Except as provided in this section, the powers, duties, functions, rights, privileges, and immunities of a city are vested with any county that has either:

(1) ~~no~~ No portion of an incorporated municipality located within its ~~boundaries.~~ boundaries; or

(2) One incorporated municipality located within the county, but the land area of that municipality is located primarily in another county and consists of less than 100 acres within the county exercising powers under this Article.

(b) All of the following shall apply to any county exercising the powers, duties, functions, rights, privileges, and immunities of a city under this Article:

(1) It may not exercise any such powers, duties, functions, rights, privileges, and immunities outside the boundaries of the county.

(2) Article 4A of Chapter 160A of the General Statutes (Extension of Corporate Limits) does not apply.

(3) Article 5 of Chapter 160A of the General Statutes (Form of Government) does not apply.

(4) Article 7 of Chapter 160A of the General Statutes (Administrative Offices) does not apply.

(5) Article 13 of Chapter 160A of the General Statutes (Law Enforcement) does not apply.

(6) G.S. 153A-340(b) (Zoning of Bona Fide Farms) shall apply to all areas within the county boundaries.

(7) The provisions of Chapter 163 of the General Statutes relating to municipal elections do not apply except to the extent they applied to the county absent this Article.

(8) If the county is subject to this Article under subdivision (a)(2) of this section, it may not exercise any such powers, duties, functions, rights, privileges, and immunities within the corporate limits of the municipality located partly within the county.

(c) The board of commissioners may by ordinance provide that this Article does not confer the power, duty, function, right, privilege, or immunity of a city upon the county as to a specific power, duty, function, right, privilege, or immunity, and as to such specified power, duty, function, right, privilege, or immunity it shall not be considered as a city.

(d) If the board of commissioners exercises any power, duty, function, right, privilege, or immunity authorized under both Chapter 153A and Chapter 160A of the

General Statutes, and those statutes conflict, the board of commissioners shall state in their minutes under which Chapter the power, duty, function, right, privilege, or immunity is being exercised.

"§ **153A-472. Definitions.**

For the purposes of this Article, any statutory reference to:

(1) A city shall be construed as a reference to a county.

(2) A city council or governing board shall be construed as a reference to the board of commissioners.

(3) The mayor shall be construed as a reference to the chair of the board of commissioners.

(4) Any other city official shall be construed as a reference to the equivalent county official.

"§ **153A-472.1. Property tax levy.**

If a county is subject to this Article under G.S. 153A-471(a)(2), it may not levy property taxes on the entire county for any function authorized by this Article but not otherwise authorized by law for counties. Instead, the county may establish a county service district under Part 1 of Article 16 of this Chapter, to consist of the entire area of the county not in an incorporated municipality.

"§ **153A-473. Applicability.**

This Article only applies to a county if approved by the qualified voters of the county in a referendum called by the board of commissioners in accordance with G.S. 163-287. The referendum shall be conducted by the county board of elections in accordance with the provisions of law generally applicable to special elections. The ballot question shall be determined by the board of commissioners after consultation with the county attorney as to form."

SECTION 10.(b) G.S. 153A-301(a) is amended by adding a new subdivision to read:

"(11) Services permitted under Article 24 of this Chapter if the district is subject to G.S. 153A-472.1."

SECTION 10.(c) G.S. 153A-302 is amended by adding a new subsection to read:

"(e) Exceptions for Article 24 District. – The following requirements do not apply to a board of commissioners that proposes to create a service district pursuant to G.S. 153A-301(a)(11) that covers the entire unincorporated area of the county:

(1) The requirement that the district cannot be created unless the board makes the finding in subdivision (a1)(2) of this section.

(2) The requirement in subsection (c) of this section to notify each property owner by mail, if the board publishes a notice of its proposal to establish the district, once a week for two successive weeks before the date of the hearing required by that subsection."

SECTION 10.1. Section 6.1 of the Charter of the Town of Pilot Mountain, being Chapter 28 of the 1971 Session Laws, reads as rewritten:

"Sec. 6.1. Town Clerk and Treasurer. The ~~Board of Commissioners~~ Town Manager shall appoint a Town Clerk and Treasurer to keep a journal of the proceedings of the Board of Commissioners and to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Board of Commissioners may direct."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 2:09 p.m. on the 22nd day of September, 2005.

H.B. 248 **Session Law 2005-434**

AN ACT TO PROVIDE THAT CERTAIN PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE SHALL NOT BE OFFERED FOR SELF-SERVICE SALES, BUT SHALL BE STORED AND SOLD BEHIND A PHARMACY COUNTER; TO PROVIDE THAT RETAILERS MUST REQUIRE IDENTIFICATION FROM PROSPECTIVE PURCHASERS AND MAINTAIN INFORMATION FROM EACH TRANSACTION IN A RECORD AVAILABLE FOR INSPECTION BY LAW ENFORCEMENT; TO PROVIDE FOR PURCHASE LIMITS ON CERTAIN PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE OF TWO PACKAGES PER SINGLE TRANSACTION AND THREE PACKAGES PER MONTH; TO PROVIDE THAT RETAILERS MUST TRAIN EMPLOYEES INVOLVED IN THE SALE OF CERTAIN PSEUDOEPHEDRINE PRODUCTS; TO AUTHORIZE THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ADD OR DELETE SPECIFIC PSEUDOEPHEDRINE PRODUCTS FROM THE REQUIREMENTS OF THE ARTICLE, OR MODIFY SECURITY AND STORAGE MEASURES APPLICABLE TO SPECIFIC PSEUDOEPHEDRINE PRODUCTS; TO PROVIDE FOR CRIMINAL AND CIVIL PENALTIES FOR RETAILERS', EMPLOYEES', AND PURCHASERS' VIOLATIONS OF THE ACT; TO CREATE THE LEGISLATIVE COMMISSION ON METHAMPHETAMINE ABUSE; TO REQUIRE THAT WHOLESALE DISTRIBUTORS OF PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE MUST BE LICENSED UNDER ARTICLE 12A OF CHAPTER 106 OF THE GENERAL STATUTES; TO MAKE THE MANUFACTURE OF METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO PROVIDE FOR RESTRICTED BAIL FOR CERTAIN PERSONS ARRESTED FOR VIOLATIONS OF G.S. 90-95(B)(1A) OR G.S. 90-95(D1)(2)B.; AND TO PROHIBIT THE SALE OF DRUGS AS DEFINED UNDER THE NORTH CAROLINA FOOD, DRUG, AND COSMETIC ACT AND PRODUCTS CONTAINING PSEUDOEPHEDRINE BY CERTAIN PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5D.

"Control of Methamphetamine Precursors.

"**§ 90-113.50. Title.**

This Article shall be known and may be cited as the "Methamphetamine Lab Prevention Act of 2005."

"**§ 90-113.51. Definitions.**

(a) For purposes of this Article, "pseudoephedrine product" means a product containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or isomers, or salts of their isomers.

(b) For purposes of this Article, a "retailer" means an individual or entity that is the general owner of an establishment where pseudoephedrine products are available for sale.

(c) For purposes of this Article, the "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

"§ **90-113.52. Pseudoephedrine: restrictions on sales.**

(a) A product whose sole active ingredient is pseudoephedrine in strength of 30 milligrams or more per tablet or caplet shall not be offered for retail sale loose in bottles but shall be sold only in blister packages.

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner: Any pseudoephedrine product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients shall be stored and sold behind a pharmacy counter.

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish photo identification. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons and shall contain a statement in at least 10-point boldface type at the top of every page substantially similar to the following: "NORTH CAROLINA LAW STRICTLY PROHIBITS A SINGLE TRANSACTION PURCHASE OF MORE THAN TWO PACKAGES OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE (SIX GRAMS TOTAL), AND NO MORE THAN THREE PACKAGES (NINE GRAMS TOTAL) OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE FURNISHING OF FALSE INFORMATION IN CONNECTION THEREWITH MAY SUBJECT ME TO CRIMINAL PENALTIES."

(d) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. A record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for

the exclusive use of the retailer and law enforcement. The retailer may destroy the information after two years from the date of the transactions.

(e) This section does not apply to any pseudoephedrine product that is in the form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

"**§ 90-113.53. Pseudoephedrine transaction limits.**

(a) No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter retail sale more than two packages containing a combined total of more than six grams of any pseudoephedrine products. This limit does not apply if the product is dispensed under a valid prescription.

(b) No person shall purchase at retail more than three packages containing a combined total of more than nine grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

(c) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

"**§ 90-113.54. Posting of signs.**

A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale stating: "North Carolina law strictly prohibits a single transaction purchase of more than two packages (six grams total) of products containing pseudoephedrine, and no more than three packages (nine grams total) of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers."

"**§ 90-113.55. Training of employees.**

A retailer shall require that employees of the establishment involved in the sale of pseudoephedrine products in the form of tablets or caplets, and any other pseudoephedrine product for which the Commission issues an order pursuant to G.S. 90-113.58 to subject the product to requirements under this Article, be trained in a program conducted by or approved by the Commission pursuant to G.S. 90-113.59.

"**§ 90-113.56. Penalties.**

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. A retailer convicted of a third offense occurring on the premises of a single establishment shall be prohibited from making pseudoephedrine products available for sale at that establishment.

(b) Any purchaser or employee who willfully and knowingly violates G.S. 90-113.52(c) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. This subsection shall not be construed to apply to bona fide innocent purchasers.

(c) A retailer who fails to train employees in accordance with G.S. 90-113.55, adequately supervise employees in transactions involving pseudoephedrine products, or reasonably discipline employees for violations of this Article shall be fined up to five hundred dollars ($500.00) for the first violation, up to seven hundred fifty dollars ($750.00) for the second violation, and up to one thousand dollars ($1,000) for a third or subsequent violation of this section.

"**§ 90-113.57. Immunity.**

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a person reasonably believed to be ineligible to purchase a pseudoephedrine product pursuant to this Article, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of pseudoephedrine products.

"**§ 90-113.58. Commission authority to control pseudoephedrine products.**

(a) The Commission may add or delete a specific pseudoephedrine product from requirements of this Article on the petition of any interested party, or its own motion. In addition, the Commission may modify the specific storage, security, transaction limit, and record-keeping requirements applicable to a particular product upon such terms and conditions as they deem appropriate. In every case, the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding or deleting a product. A petition by the Commission or the North Carolina Department of Justice to add or delete a specific product from requirements of this Article shall be placed on the agenda for consideration at the next regularly scheduled meeting of the Commission, as a matter of right. In making a determination regarding a specific product, the Commission shall consider whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State.

(b) In making a determination, the Commission shall make findings with respect thereto and shall issue an order adding or deleting the specific product from requirements of this Article. The order shall be published in the North Carolina Register at least 60 days prior to the time that the addition or deletion of a specific product from the requirements of this Article becomes effective.

(c) The Commission may adopt temporary and permanent rules in accordance with this section.

"**§ 90-113.59. Commission development of employee training programs.**

The Commission shall develop training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale and shall approve such programs for implementation by retailers. The Commission may also conduct employee training programs for retail establishments. The Commission may adopt temporary and permanent rules in this regard.

"**§ 90-113.60. Preemption.**

This Article shall preempt all local ordinances or regulations governing the sale by a retailer of over-the-counter products containing pseudoephedrine."

SECTION 2. G.S. 106-145.2 reads as rewritten:

"**§ 106-145.2. Definitions.**

The following definitions apply in this Article:

…

(9) Prescription drug. – A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b). Only for the purposes of the provisions of this Article, the term "prescription drug" shall include pseudoephedrine products as defined in G.S. 90-113.51 that may be dispensed without a prescription.

…."

SECTION 3. Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-145.13. Submittal of reports by wholesale distributors of transactions involving pseudoephedrine products.**

Every 30 calendar days, a wholesale distributor of pseudoephedrine products licensed as provided in this Article shall submit a report electronically to the State Bureau of Investigation that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The report shall be submitted on a form and in a manner approved by the State Bureau of Investigation. A wholesale distributor shall maintain each monthly report for a period of two years from the date of submittal to the State Bureau of Investigation. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency or the Department of Agriculture and Consumer Services."

SECTION 4. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings."

SECTION 5. Article 32 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-254.1. Certain sales prohibited.**

No person who is described by G.S. 66-250(1), (2), (5), or (6) shall sell or offer to sell any product that meets any of the following criteria:

(1) The product contains pseudoephedrine as the sole active ingredient or in combination with other active ingredients.

(2) The product is a drug as defined by G.S. 106-121(6).

Any person who violates this section shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense."

SECTION 6. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-736.1. Bail in cases of manufacture of methamphetamine.**

Notwithstanding the provisions of G.S. 15A-736, in determining bond and other conditions of release for a person arrested for any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence both:

(1) The person was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine.

(2) The person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner."

SECTION 7. Legislative Commission on Methamphetamine Abuse Established.

(a) Establishment. – The Legislative Commission on Methamphetamine Abuse is established.

(b) Purpose. – The purpose of the Commission is to study: (i) issues regarding the abuse of methamphetamine precursors used to make methamphetamine and any other issues that are relevant to that topic; (ii) the cost, feasibility, and advisability of developing and implementing data-tracking mechanisms related to the sale of pseudoephedrine products; (iii) development of programs to curb the use of and access to methamphetamine in North Carolina; (iv) development of training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale; (v) development of programs to educate the citizens of the State on the issues of detection and prevention of clandestine methamphetamine laboratories in the State and to educate the citizens of the State of the restrictions on the sale of pseudoephedrine products set forth in Article 5D of Chapter 90 of the General Statutes.

(c) Membership. – The Commission shall consist of 22 members to be appointed as follows:

(1) Two members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) The Attorney General or the Attorney General's designee.

(4) The Governor or the Governor's designee.

(5) One representative from the North Carolina Association of County Directors of Social Services, as appointed by the President Pro Tempore of the Senate.

(6) One representative from the North Carolina Retail Merchants Association, as appointed by the Speaker of the House of Representatives.

(7) One representative from the North Carolina Association of Community Pharmacists, as appointed by the President Pro Tempore of the Senate.

(8) One representative from the Conference of District Attorneys of North Carolina, as appointed by the Speaker of the House of Representatives.

(9) One representative from the Consumer Healthcare Products Association, as appointed by the President Pro Tempore of the Senate.

(10) One representative from the North Carolina Sheriffs' Association, Inc., as appointed by the Speaker of the House of Representatives.

(11) The Secretary of Health and Human Services or the Secretary's designee.
(12) The Director of the State Bureau of Investigation or the Director's designee.
(13) One representative from the North Carolina Narcotic Enforcement Officers' Association, as appointed by the President Pro Tempore of the Senate.
(14) One representative from the North Carolina Association of Chiefs of Police, as appointed by the Speaker of the House of Representatives.
(15) The Commissioner of Agriculture or the Commissioner's designee.
(16) The Chair of the Commission on Mental Health or the Chair's designee.
(17) The Director of the National Drug Intelligence Center or the Director's designee.
(18) The Administrator of the United States Drug Enforcement or the Administrator's designee.
(19) One representative from the National Association of Chain Drug Stores, as appointed by the President Pro Tempore of the Senate.
(20) One representative from a child advocacy organization in the State, as appointed by the Speaker of the House of Representatives.

(d) Terms. – Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The President Pro Tempore of the Senate shall initially appoint three members for a term of two years and four members for a term of three years.
(2) The Speaker of the House of Representatives shall initially appoint three members for a term of two years and four members for a term of three years.

Initial terms shall commence on September 1, 2005.

(e) Cochairs. – The Commission shall have two Cochairs, one senator designated by the President Pro Tempore of the Senate and one representative designated by the Speaker of the House of Representatives from among their respective appointees. The initial terms shall commence on September 1, 2005.

(f) Vacancies. – A vacancy on the Commission shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. – The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Meetings. – The Cochairs shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(i) Quorum. – A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(j) Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

(k) Reports. – The Commission shall annually report on its activities and recommendations, including any legislative proposals, to the General Assembly. The Commission shall make its first report on or before November 1, 2005.

(l) Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this section.

SECTION 8. The State Bureau of Investigation shall study issues regarding the use of pseudoephedrine products to make methamphetamine, including any data on the use of particular pseudoephedrine products in that regard, pertinent law enforcement statistics, trends observed, and other relevant information, and report annually to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, the Legislative Commission on Methamphetamine Abuse, and the Joint Governmental Operations Subcommittee on Justice and Public Safety. The first report shall be submitted on or before November 1, 2006.

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

SECTION 10. G.S. 90-113.58 and G.S. 90-113.59, as enacted by Section 1 of this act, and Sections 7, 8, 9, and 10 of this act are effective when it becomes law. The remainder of Section 1, and Sections 2, 3, 4, 5, and 6 of this act become effective January 15, 2006, and apply to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 2nd day of September, 2005.

Became law upon approval of the Governor at 11:19 a.m. on the 27th day of September, 2005.

H.B. 105 **Session Law 2005-435**

AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS, TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, AND TO ALLOW INTERSTATE PASSENGER AIR CARRIERS A REFUND OF SALES AND USE TAXES ON FUEL.

The General Assembly of North Carolina enacts:

PART I. MOTOR FUEL TAX CHANGES

SECTION 1. G.S. 105-236(2) reads as rewritten:

"§ **105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

…

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000)."

SECTION 2. G.S. 105-241(b) is amended by adding a new subdivision to read:

"(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

…

(2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return under Article 36C or Article 36D of this Chapter must pay the tax by electronic funds transfer."

SECTION 3. G.S. 105-449.39 reads as rewritten:

"§ **105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the Secretary must refund the excess to the motor ~~carrier.~~carrier in accordance with G.S. 105-266(a)(3)."

SECTION 4. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the ~~ratio of the~~ number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified vehicles ~~to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State~~ during that period."

SECTION 5. G.S. 105-449.46 reads as rewritten:

"§ **105-449.46. Inspection of books and records.**

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this ~~Article.~~Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes."

SECTION 6. G.S. 105-449.47(a1) reads as rewritten:

"(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. All identification markers issued by the Secretary remain the property of the State. The Secretary may ~~withhold or~~ revoke a registration or an identification marker when a motor carrier fails to comply with this ~~Article, former Article 36 or 36A of this Subchapter,~~ Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly

display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it."

SECTION 7. Article 36B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-449.47A. Reasons why the Secretary can deny an application for a registration and identification marker.**

The Secretary may refuse to register and issue an identification marker to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued an identification marker.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 8. G.S. 105-449.51 reads as rewritten:

"§ **105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display an identification marker as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall ~~only~~ be fined ~~no less than ten dollars ($10.00) nor more than~~ two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense."

SECTION 9. G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier ~~is not required to obtain a separate license for any other activity for which a license is required and~~ is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a ~~distributor.~~ distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

SECTION 10. G.S. 105-449.69(b) reads as rewritten:

"(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, ~~a bulk end user of undyed diesel fuel, a retailer of undyed diesel fuel,~~ or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

SECTION 11. G.S. 105-449.73 reads as rewritten:

"§ **105-449.73. Reasons why the Secretary can deny an application for a license.**

The Secretary may refuse to issue a license to an ~~individual~~ applicant that ~~has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business~~ has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.

(1a) Had a motor fuel license or registration issued by another state cancelled for cause.

(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

(5) Failed to remit payment for ~~an overdue tax debt~~ a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term ~~"overdue tax debt"~~ "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 12. G.S. 105-449.86(a) reads as rewritten:

"(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1, 2004.

(2) ~~Either a~~ A local bus ~~or an intercity bus~~ that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

~~(4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.~~"

SECTION 13. G.S. 105-449.90A reads as rewritten:

"§ **105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.**

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination ~~state if the supplier is licensed in that state for payment of motor fuel excise taxes.~~state. ~~Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes.~~Payments of destination state tax are due to the destination state ~~or the Secretary, as appropriate,~~ on the date set by the law of the destination state. ~~Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the information required by the Secretary.~~"

SECTION 14. G.S. 105-449.96 is amended by adding a new subdivision to read:

"§ **105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

…

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of fuel, licensed supplier receiving the fuel, and terminal code."

SECTION 15. The catch line for G.S. 105-449.106 reads as rewritten:

"§ **105-449.106. Quarterly refunds for ~~certain local governmental entities,~~ nonprofit organizations, taxicabs, and special mobile equipment.**"

SECTION 16. G.S. 105-449.115 reads as rewritten:

"§ **105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

…

(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles,~~Department of Crime Control and Public Safety or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion within seven days after the diversion occurred and received a confirmation number for the diversion.

(2) Tax was timely paid on the diverted fuel.

(h) Sanctions Against Terminal Operator. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a terminal operator who intentionally issues a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 17. G.S. 105-449.115A reads as rewritten:

"§ **105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person ~~may not transport motor fuel by~~ who operates a tank wagon into which motor fuel is loaded from some other source must have ~~unless that person has~~ an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.

(2) The date the fuel was loaded.

(3) The type of fuel.

(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.

(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.

(3) Keep a copy of the invoice, bill of sale, or shipping document at a centralized place of business for at least three years from the date of delivery.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles,~~ Department of Crime Control and Public Safety or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 18. G.S. 105-449.123 reads as rewritten:

"§ **105-449.123. Marking requirements for dyed fuel storage facilities.**

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle. A person who intentionally fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory held in the

storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.

(1) The storage tank of the storage facility must be marked if the storage tank is visible.

(2) The fillcap or spill containment box of the storage facility must be marked.

(3) The dispensing device that serves the storage facility must be marked.

(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable."

SECTION 19. G.S. 119-15 is amended by adding the following two new subdivisions to read:

"§ **119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

…

(1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

(1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

SECTION 20. G.S. 119-15.1(a) reads as rewritten:

"(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.

(2) A kerosene distributor.

(3) A kerosene terminal operator.

(4) A dyed diesel fuel distributor."

SECTION 21. G.S. 119-15.3(a) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit may not be less than five hundred dollars ($500.00) and may not be more than twenty thousand dollars ($20,000)."

SECTION 22. G.S. 20-91 reads as rewritten:

"§ **20-91. Audit of vehicle registrations under the International Registration Plan.**

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The ~~Division~~ Department of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to

determine the information ~~provided to the Division~~ when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The ~~Division~~ Department of Revenue may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The ~~Commissioner~~ Commissioner, based on information provided by the Department of Revenue audit, may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The results of any audit conducted under this section shall be provided to the Division. The notice of any assessments ~~will~~ shall be sent by the Division to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

SECTION 23. G.S. 105-449.115(g), as enacted by Section 16 of this part, is effective when it becomes law and applies to penalties imposed on or after January 1, 2005. Sections 1, 7, 8, 9, and 18 and the remainder of Section 16 of this part become effective January 1, 2006. The remainder of this part is effective when it becomes law.

PART II. REVENUE LAWS TECHNICAL CHANGES

SECTION 24. G.S. 105-32.8 reads as rewritten:

"§ **105-32.8. Federal determination that changes the amount of tax payable to the State.**

If the federal government corrects or otherwise determines the gross estate tax imposed under section 2001 of the Code or the amount of the maximum state death tax credit allowed an estate under section ~~6166~~2011 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section forfeits the right to any refund due by reason of the determination."

SECTION 25.(a) G.S. 18B-101(15) reads as rewritten:

"(15) 'Unfortified wine' means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from ~~pure~~ grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States."

SECTION 25.(b) G.S. 105-113.68(a) reads as rewritten:

"(a) Definitions. – ~~As used in this Article, unless the context clearly requires otherwise:~~The following definitions apply in this Article:

(1) ~~"ABC Commission" means~~ ABC Commission. – ~~the~~ The North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.

(3) ~~"ABC permit" means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase-transportation permit. Unless the context clearly requires otherwise, "ABC permit" means a presently valid permit.~~ABC permit. – Defined in G.S. 18B-101.

(4) ~~"Alcoholic beverage" means a beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.~~Alcoholic beverage. – Defined in G.S. 18B-101.

(5) ~~"Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.~~Fortified wine. – Defined in G.S. 18B-101.

(6) ~~"License" means a~~ License. – A certificate, issued pursuant to this Article by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.

(7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.~~Malt beverage. – Defined in G.S. 18B-101.

(8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~Person. – Defined in G.S. 105-228.90.

(9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or by any means, for consideration.~~Sale. – Defined in G.S. 18B-101.

(10) ~~"Secretary" means the~~ Secretary. – The Secretary of Revenue.

(11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.~~Spirituous liquor or liquor. – Defined in G.S. 18B-101.

(12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and produced in accordance with the regulations of the United States.~~Unfortified wine. – Defined in G.S. 18B-101.

(13) ~~"Wholesaler or importer" when~~ Wholesaler or importer. – When used with reference to wholesalers or importers of wine or malt ~~beverages~~ beverages, the term includes resident wineries that sell their wines at retail and resident breweries that produce fewer than ~~310,000 gallons~~ 25,000 barrels of malt beverages per year.

(14) ~~"Wine" means unfortified~~ Wine. – Unfortified and fortified wine.

(15) ~~"Wine shipper permittee" means a~~ Wine shipper permittee. – A winery that holds a wine shipper permit issued by the ABC Commission under G.S. 18B-1001.1."

SECTION 26. G.S. 105-113.83(b) reads as rewritten:

"(b) Beer and Wine. – The excise taxes on malt beverages and wine levied under G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident wholesaler or importer who first handles the beverages in this State. The excise taxes levied under G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to G.S. 18B-1001.1 must be paid by the wine shipper permittee. The taxes on malt beverages and wine ~~shall be paid~~ are payable only once on the same beverages. The tax ~~shall be paid~~ is due on or before the 15th day of the month following the month in which the beverage is first sold or otherwise disposed of in this State by the wholesaler, importer, or wine shipper permittee. When excise taxes are paid on wine or malt beverages, the wholesaler, importer, or wine shipper permittee ~~shall~~ must submit to the Secretary verified reports on forms provided by the Secretary detailing sales records for the month for which the taxes are paid. The report ~~shall~~ must indicate the amount of excise tax due, contain the information required by the Secretary, and indicate separately any transactions to which the excise tax does not apply."

SECTION 27. G.S. 105-113.112 reads as rewritten:

"§ **105-113.112. Confidentiality of information.**

~~Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.~~Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the following restrictions on disclosure:

(1) G.S. 105-259 prohibits the disclosure of the information, except in the limited circumstances provided in that statute.

(2) The information may not be used as evidence, as defined in G.S. 15A-971, in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. Under this prohibition, no officer, employee, or agent of the Department may testify about the information in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. This subdivision implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. This subdivision does not apply to information obtained from a source other than an employee, officer, or agent of the Department. An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor."

SECTION 28. G.S. 105-129.8(a2) reads as rewritten:

"(a2) Installments. – The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit must be taken in equal installments over the four years following the taxable year in which the additional employee was hired and is conditioned on the taxpayer's continued employment ~~by the taxpayer~~ in this State of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees in this State falls below the number of full-time employees the taxpayer had in this State in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

SECTION 29.(a) G.S. 105-129.62(c) reads as rewritten:

"(c) Environmental Impact. – A taxpayer is eligible for the credit allowed under this ~~section~~ Article with respect to a facility in this State only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any program

implemented by an agency of the Department of Environment and Natural Resources, and have had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. For the taxpayer's related entities and strategic partners, this subsection applies only to the activities of the related entity or strategic partner at the facility with respect to which a credit is claimed. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). Upon request, the Secretary of Environment and Natural Resources must notify the Department of Revenue of whether a person currently has any of these pending actions or has had any of these final determinations within the last five years."

SECTION 29.(b) G.S. 105-129.62(d) reads as rewritten:

"(d) Safety and Health Programs. – A taxpayer is eligible for the credit allowed under this ~~section~~ Article with respect to a facility in this State only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no citations under the Occupational Safety and Health Act at the facility with respect to which the credit is claimed that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, "serious violation' has the same meaning as in G.S. 95-127. Upon request, the Secretary of Labor must notify the Department of Revenue of whether a person has had these citations become final orders within the past three years."

SECTION 29.(c) G.S. 105-129.62(e) reads as rewritten:

"(e) Overdue Tax Debts. – A taxpayer is eligible for the credit allowed under this ~~section~~ Article with respect to a facility only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no overdue tax debts that have not been satisfied or otherwise resolved."

SECTION 29.(d) G.S. 105-129.63 reads as rewritten:

"§ **105-129.63. Determination by the Secretary of Commerce.**

The taxpayer must apply to the Secretary of Commerce for the determination required under G.S. 105-129.62. The application must be made under oath and must provide any information the Secretary requires in order to make the determination. The determination by the Secretary of Commerce is a factual determination. The Secretary must make this determination in any case in which the taxpayer can demonstrate performance or can provide a credible plan for performance.

If the taxpayer fails to create the required number of new jobs or to make the required investment, the information provided by the taxpayer on the application proves to have been false at the time it was given, and the person making the application knew or should have known that the information was false, the taxpayer forfeits any credits claimed under this Article with respect to the facility. A taxpayer that forfeits a credit under this ~~section~~ Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

SECTION 30. G.S. 105-164.13(29) is repealed.

SECTION 31. G.S. 105-164.13(39) reads as rewritten:

"§ **105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

…

(39) **(Effective July 1, 2005 – see note)** Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals. As used in this subdivision, the term "free distribution periodical" means a publication that is continuously published on a periodic basis monthly or more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail."

SECTION 32.(a) G.S. 105-164.14(f) reads as rewritten:

"(f) Information to ~~Counties.~~ Counties and Cities. – The Secretary must give information on refunds of tax made under this section to a designated county or city official within 30 days after the official makes a ~~Upon~~ written request ~~of a county,~~ to the Secretary for the information. ~~shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months,~~For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund ~~under subsection (b), (c), or (g) of this section~~ in the past 12 months of at least one thousand dollars ($1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to all the counties in which the city is located. The list ~~shall~~ must include the name and address of each ~~claimant~~ of these claimants and the amount of the refund ~~it has~~ received from ~~that county.~~ each county covered by the request.

~~Upon written request of a county, a~~ A claimant that has received a refund under ~~subsection (b), (c), or (g) of~~ this section ~~shall provide the~~of tax paid to a county must give information on the refund to a designated ~~county~~ official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the ~~county~~ official to verify the request. If a claimant determines that a refund it has received under this section is incorrect, the claimant must file an amended request for a refund.

For the purpose of this subsection, ~~the~~ a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the ~~board.~~ Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information ~~provided to a county~~ given to a county or city official under this ~~subsection~~ section is not a public record and may not be disclosed except ~~in accordance with G.S. 153A-148.1.~~ as provided in G.S. 153A-148.1 or G.S. 160A-208.1. ~~If a claimant determines that a refund it has received under subsection (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund.~~"

SECTION 32.(b) G.S. 105-259(a)(2) reads as rewritten:

"(2) Tax information. – Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) ~~information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.~~the amount of tax refunds paid to a governmental entity listed in G.S. 105-164.14(c) or to a State agency."

SECTION 32.(c) G.S. 105-259(b)(6a) reads as rewritten:

"(6a) To furnish the county or city official designated under G.S. 105-164.14(f) a list of claimants that have received a refund of ~~the~~ county sales or use tax to the extent authorized in G.S. 105-164.14(f)."

SECTION 33.(a) G.S. 105-164.14(j)(3) reads as rewritten:

"(3) Industries. – This subsection applies to the following industries:

a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.

b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:

1. Manufacturing complete automobiles and light-duty motor vehicles.
2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
2. Processing botanical drugs and herbs by grading, grinding, and milling.
3. Isolating active medicinal principals from botanical drugs and herbs.
4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components."

SECTION 33.(b) G.S. 105-164.14(j), as amended by Section 10(a) of this act, is further amended by adding a new subdivision to read:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

…

(5) Sunset. – This subsection is repealed for sales made on or after January 1, 2010."

SECTION 33.(c) Section 32B.5 of S.L. 2004-124 reads as rewritten:

"**SECTION 32B.5.** The amendment to G.S. 105-164.14(j)(2) made by this part is effective on and after January 1, 2004, and applies to sales made on or after that date. Sections 32B.2 and 32B.3 of this part become effective October 1, 2004, and apply to sales made on or after that date. Section 32B.4 of this part becomes effective July 1, 2005, and applies to sales made on or after that date. The remainder of this part becomes effective July 1, 2004, and applies to sales made on or after that date. ~~The amendments to G.S. 105-164.14(j)(3) made by this part are repealed effective for sales made on or after July 1, 2009.~~"

SECTION 33.(d) This section becomes effective August 1, 2005, and applies to sales made on or after that date.

SECTION 34.(a) G.S. 105-113.82(h) reads as rewritten:

"(h) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets ~~are~~ is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

SECTION 34.(b) G.S. 105-116.1(e) reads as rewritten:

"(e) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets ~~are~~ is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

SECTION 34.(c) G.S. 105-164.44F(e) reads as rewritten:

"(e) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets ~~are~~ is open to the public."

SECTION 35. G.S. 105-187.20 reads as rewritten:

"§ **105-187.20. Definitions.**

The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not include lease or rental, and the following ~~definitions apply~~ definition applies to this Article:

~~(1) Chlorofluorocarbon refrigerant. – Defined in G.S. 130A-290(a).~~

(2) White goods. – Defined in G.S. 130A-290(a)."

SECTION 36. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in ~~G.S. 105-29,~~ G.S. 105-32.8, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination.

If a taxpayer forfeits a tax credit or tax benefit pursuant to forfeiture provisions of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal

residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

SECTION 37. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(17) To inform the Business License Information Office of the Department of ~~Secretary of State~~ Commerce of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

…

(32) To furnish to a taxpayer claiming a credit under Article 3G of this Chapter information from a related entity or strategic partner to the extent that information was used by the Secretary to adjust the amount of tax credit claimed by the taxpayer.

…."

SECTION 38. G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic structure or site by a local ordinance adopted pursuant to ~~G.S. 160A-399.4~~ G.S. 160A-400.7 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is ~~hereby~~ designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 39. G.S. 105-278.1(c) reads as rewritten:

"(c) For purposes of this section:

(1) A specified unit of government (federal, State, or local) includes its departments, institutions, and agencies.

(2) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of State government:

a. The State Marketing Authority established by G.S. 106-529.

b. The Board of Governors of the University of North Carolina incorporated under the provisions of G.S. 116-3 and known as "The University of North Carolina."

c. The North Carolina Museum of Art made an agency of the State under ~~G.S. 140-1.~~G.S. 140-5.12.

(3) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of local government of this State:

a. An airport authority, board, or commission created as a separate and independent body corporate and politic by an act of the General Assembly.

b. An airport authority, board, or commission created as a separate and independent body corporate and politic by one or more counties or municipalities or combinations thereof under the authority of an act of the General Assembly.

c. A hospital authority created under ~~G.S. 131-93.~~G.S. 131E-17.

d. A housing authority created under G.S. 157-4 or G.S. 157- 4.1.

e. A municipal parking authority created under G.S. 160-477.

f. A veterans' recreation authority created under G.S. 165-26."

SECTION 40. G.S. 20-81.12(b7) reads as rewritten:

"(b7) Scenic Rivers Plates. – The Division must receive 300 or more applications for a Scenic Rivers plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Scenic Rivers plates to the Clean Water Management Trust Fund established in ~~G.S. 113-45.3.~~G.S. 113A-253."

SECTION 41. G.S. 105-469(a) reads as rewritten:

"(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article. As directed by G.S. 105-164.13B, taxes levied by a county on food are administered as if they were levied by the State under Article 5 of this Chapter. The Secretary must, on a monthly basis, distribute local taxes levied on food to the taxing counties as follows:

(1) The Secretary must allocate one-half of the net proceeds on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b). The Secretary must include one-half of the amount allocated under this subdivision in the distribution made under Article 40 of this Chapter and must include the remaining one-half in the distribution made under Article 42 of this Chapter.

(2) The Secretary must allocate the remaining net proceeds proportionately to each taxing county based upon the amount of sales tax on food collected in the taxing county in the 1997-1998 fiscal year under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws relative to the total amount of sales tax on food collected in all taxing counties in the 1997-1998 fiscal year under Article 39 of this Chapter and under Chapter 1096 of the 1967 Session Laws. The Secretary must include the amount allocated under this subdivision in the distribution made under Article 39 of this Chapter."

SECTION 42. G.S. 105A-8(a) reads as rewritten:

"§ **105A-8. State agency notice, hearing, decision, and refund of setoff.**

(a) Notice. – Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The

notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection ~~(e)~~(d) of this section."

SECTION 43. G.S. 106-516.1 reads as rewritten:

"§ **106-516.1. Carnivals and similar amusements not to operate without permit.**

Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than 30 days prior to a regularly advertised agricultural ~~fair and so in conflict with G.S. 105-37.1(d).~~fair. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a Class 1 misdemeanor: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events."

SECTION 44. G.S. 146-22.5 reads as rewritten:

"§ **146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.**

(a) If a State agency acquires land under G.S. 146-22.3 or G.S. 146-22.4 and later uses this land to mitigate wetlands permitted to be lost in the same county, then the county shall reimburse the State ~~agency for a percentage of~~ agency. The reimbursement shall equal the estimated amount of ad valorem taxes paid for the land in accordance with G.S. 146-22.3 minus ten percent (10%) of this amount ~~times~~ multiplied by the number of years the State agency held the land before the wetlands were lost.

(b) Application. – This section applies only to land acquired in counties designated as an enterprise tier one or enterprise tier two area under G.S. 105-129.3."

SECTION 45. G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~20th~~ 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 46. G.S. 59-35.2 reads as rewritten:

"§ **59-35.2. ~~Fees.~~Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee

(1)	Application for reserved name	$10.00
(2)	Notice of transfer of reserved name	10.00
(3)	Application for registered name	10.00
(4)	Application for renewal of registered name	10.00
(5)	Registered limited liability partnership's or foreign limited liability partnership's statement of change of registered agent or registered office or both	5.00
(6)	Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership	5.00
(7)	Agent's statement of resignation	No Fee
(8)	Designation of registered agent or registered office or both	5.00
(9)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(10)	Articles of merger	50.00
(11)	Application for registration as a registered limited liability partnership	125.00
(12)	Certificate of amendment of registration as a registered limited liability partnership	25.00
(13)	Cancellation of registration as a registered limited liability partnership	25.00
(14)	Application for registration as a foreign limited liability partnership	125.00
(15)	Certificate of amendment of registration as a foreign limited liability partnership	25.00
(16)	Cancellation of registration as a foreign limited liability partnership	25.00
(17)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion	10.00
(18)	Annual report	200.00
(19)	Articles of correction	10.00
(20)	Any other document required or permitted to be filed pursuant to this ~~act~~ Act	10.00

(b) Whenever the Secretary of State is deemed appointed as a registered agent under this ~~act~~ Act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this ~~act.~~ Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a ~~document filed pursuant to this act:~~filed partnership document:

(1) One dollar ($1.00) a page for copying or comparing a copy to the ~~original; and~~original.

(2) ~~Five dollars ($5.00) for the certificate.~~Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 47.(a) S.L. 2004-123 is amended by a adding a new section to read:

"**SECTION 3.1.** This act applies to Dare County only."

SECTION 47.(b) S.L. 2004-123, as amended by this act, is reenacted.

SECTION 48. Section 5 of S.L. 2004-204 reads as rewritten:

"**SECTION 5.** Section 3 of this act becomes effective January 1, 2005, and applies to sales made on or after that date. The remainder of this act is effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005. Section 4 of this act is repealed for business activities occurring in taxable years beginning on or after January 1, 2020."

SECTION 49. The introductory language in Section 1 of S.L. 2005-53 reads as rewritten:

"**SECTION 1.** Chapter ~~377~~317 of the 1987 Session Laws reads as rewritten:".

SECTION 50. Section 1(a) of S.L. 2005-68 reads as rewritten:

"**SECTION 1.** Occupancy tax. (a) Authorization and Scope. – Upon receiving written confirmation from the National Association ~~of~~ for Stock Car Auto Racing, Inc., (NASCAR) that it will license or otherwise legally authorize the location of the NASCAR Hall of Fame Museum facility in Charlotte, North Carolina, the Mecklenburg County Board of Commissioners may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any accommodation subject to the tax under Section 6 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws. The tax authorized by this section is in addition to any other State or local sales and use tax and any other State or local occupancy tax authorized by law."

SECTION 51. Section 43.4 of S.L. 2003-284 reads as rewritten:

"**SECTION 43.4.** This part is effective for taxable years beginning on or after January 1, 2004. ~~The Commissioner of Insurance must make a certification to the Secretary of Revenue and to the Revisor of Statutes when there are no Article 65 corporations that offer medical service plans or hospital service plans. This part is repealed effective for taxable years beginning on or after the January 1 immediately following the certification required by this section.~~"

SECTION 52. S.L. 2005-120 is reenacted.

SECTION 53. G.S. 105-130.4(a)(6) reads as rewritten:

"(6) "Public utility" means any corporation that is subject to control of one ~~of~~ or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State."

SECTION 54.(a) Section 2(c) of S.L. 2005-233 reads as rewritten:

"**SECTION 2.(c)** Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Eden Account. Based on recommendations from and in consultation with the Eden City Council, the Authority shall use at least two-thirds of the funds in the Eden Account ~~for tourism promotion~~to promote travel and

tourism and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Eden. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Eden.

The following definitions apply in this Part:

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

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

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

SECTION 54.(b) Section 3(c) of S.L. 2005-233 reads as rewritten:

"**SECTION 3.(c)** Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Reidsville Account. Based on recommendations from and in consultation with the Reidsville City Council, the Authority shall use at least two-thirds of the funds in the Reidsville Account ~~for tourism promotion~~to promote travel and tourism and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Reidsville. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Reidsville.

The following definitions apply in this Part:

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

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

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

SECTION 55. If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-134.6(c)(9), as enacted by that act, reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

…

(9) The amount of qualifying expenses for which the taxpayer claims a credit under ~~G.S. 105-130.47.~~G.S. 105-151.29."

SECTION 56.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-187.51(b) reads as rewritten:

"(b) Rate. – The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used in this section, the term 'accessories' does not include electricity."

SECTION 56.(b) This section becomes effective January 1, 2006.

SECTION 57.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-228.5(d)(2) reads as rewritten:

"(d) Tax Rates; Disposition. –

…

(2) Other Insurance Contracts. – The tax rate to be applied to gross premiums on all other taxable contracts issued by insurers or health maintenance organizations and to be applied to gross premiums and gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations is one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund."

SECTION 57.(b) This section is effective for taxable years beginning on or after January 1, 2007.

SECTION 58. If Senate Bill 622, 2005 Regular Session, becomes law, then Section 33.34, as enacted by that act, reads as rewritten:

"**SECTION 33.34.** Sections 33.1, 33.24, and 33.31 through 33.34 of this part are effective when they become law. Sections 33.4(b), 33.5, 33.9, 33.12, 33.14, and 33.20 through 33.23 become effective January 1, 2006. Section 33.25 of this part is effective for taxable years beginning on or after January 1, 2006. The remainder of this part becomes effective October 1, 2005. For prepayments of telecommunications and direct-to-home satellite services, the first billing period is considered to start on or after November 1, 2005. For prepayments of satellite digital audio radio services or cable services, the first billing period is considered to start on or after February 1, 2006. Section 33.19 of this part applies to distributions to cities of the net proceeds of the sales tax imposed on telecommunications service under G.S. 105-164.4(a)(4c) collected during calendar quarters that begin on or after January 1, 2006."

SECTION 59.(a) G.S. 105-278.3(d)(4) reads as rewritten:

"(d) Within the meaning of this section:

…

(4) A literary purpose is one that pertains to letters or ~~literature (including drama),~~ literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature."

SECTION 59.(b) G.S. 105-278.7(a) reads as rewritten:

"(a) Buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection (f), below; or

(2) Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, ~~or charitable~~ charitable, or cultural purposes."

SECTION 59.(c) G.S. 105-278.7(f) reads as rewritten:

"(f) Within the meaning of this section:

(1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.

(2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.

(3) A literary purpose is one that pertains to letters or ~~literature (including drama),~~ literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature.

(4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline."

SECTION 59.1.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then Section 6.12(b) of that act reads as rewritten:

"**SECTION 6.12.(b)** If this section, or any portion of the amendment made to G.S. 66-291(b)(2) by this section, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. ~~66-291(b)(2)~~66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this section shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this section. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect."

SECTION 59.1.(b) This section becomes effective January 1, 2006.

SECTION 59.2.(a) G.S. 105-114.1(a4) reads as rewritten:

"(a4) No Double Taxation. – G.S. 105-122 does not apply to holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another

section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied ~~on the corporation~~ in other sections of this ~~Article.~~Article on the corporation or on a limited liability company whose assets must be included in the corporation's tax base under G.S. 105-114.1."

SECTION 59.2.(b) This section is effective for taxable years beginning on or after January 1, 2006.

SECTION 60. Except as otherwise provided in this part, this part is effective when it becomes law.

PART III. REFUND OF SALES AND USE TAXES ON FUEL

SECTION 61. G.S. 105-164.14 is amended by adding a new subsection to read:

"(a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in excess of two million five hundred thousand dollars ($2,500,000). The 'net amount of sales and use tax paid' is the amount paid less the refund allowed under subsection (a) of this section. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the calendar year for which the refund is claimed. The refund allowed by this subsection is in addition to the refund allowed in subsection (a) of this section."

SECTION 61.1. G.S. 105-164.14, as amended by Section 61 of this act, is further amended by adding a new subdivision to read:

"(k) Motorsports Events. – A motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred."

SECTION 62. This part becomes effective January 1, 2005, and applies to purchases made on or after that date. This part is repealed effective for purchases made on or after January 1, 2007. This part does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this part before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

PART IV. EFFECTIVE DATES

SECTION 63. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 3:00 p.m. on the 27th day of September, 2005.

H.B. 1295 **Session Law 2005-436**

AN ACT TO CLARIFY THE MAXIMUM WEIGHT OF A MOTOR VEHICLE THAT IS SUBJECT TO THE NEW MOTOR VEHICLES WARRANTIES ACT AND TO PROMOTE THE EXPEDITIOUS SETTLEMENT OF CLAIMS WHEN THE CONSUMER REQUESTS THE MANUFACTURER TO REPURCHASE THE MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-351.1(3) reads as rewritten:

"(3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01 ~~which~~ that is sold or leased in this State, but does not include 'house trailer' as defined in G.S. 20-4.01 or any motor vehicle ~~with a gross vehicle weight of~~that weighs more than 10,000 ~~pounds or more.~~pounds."

SECTION 2. G.S. 20-351.3(c) reads as rewritten:

"(c) Refunds shall be made to the consumer, ~~lessor~~ lessor, and any lienholders as their interests may appear. The refund to the consumer shall be reduced by a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use ~~is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. 'Reasonable allowance' is presumed to be the cash price or the lease price, as the case may be, of the vehicle multiplied by a fraction having as its denominator 100,000 miles and its numerator the number of miles attributed to the consumer.~~is calculated from the number of miles used by the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The number of miles used by the consumer is multiplied by the purchase price of the vehicle or the lessor's actual lease price, and divided by 120,000."

SECTION 3. This act becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:02 p.m. on the 27th day of September, 2005.

H.B. 888 **Session Law 2005-437**

AN ACT TO INCREASE THE PENALTY FOR COCKFIGHTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362 reads as rewritten:

"§ **14-362.** ~~**Cock fighting.**~~ **Cockfighting.**

A person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class ~~2 misdemeanor.~~I felony. A lease of property that is used or is intended to be used for an exhibition featuring the

fighting of a cock is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:03 p.m. on the 27th day of September, 2005.

H.B. 1277 **Session Law 2005-438**

AN ACT TO AMEND THE LICENSURE AND EDUCATION REQUIREMENTS FOR PERSONS UNDER SIXTEEN YEARS OF AGE AND TO CHANGE THE FEE CHARGED TO PARTICIPANTS IN THE DISABLED SPORTSMAN PROGRAM AND ALLOW MORE FLEXIBILITY IN THE SCHEDULING OF ACTIVITIES REQUIRED UNDER THAT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1A reads as rewritten:

"§ **113-270.1A. Hunter safety course required.**

(a) Except as provided in ~~subsection~~ subsections (a1) and (d) of this section, on or after July 1, 1991, a person, regardless of age, may not procure a hunting license ~~or hunt~~ in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.

(a1) A person who qualifies for a totally disabled resident combination hunting-fishing license under ~~G.S. 113-270.1C(b)(3)~~G.S. 113-270.1C(b)(4) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The ~~person~~ disabled hunter is accompanied by an adult ~~of at least 21 years of age~~ who is licensed to hunt; and

(2) The licensed adult ~~hunter~~ maintains a proximity to the disabled hunter which enables the adult to ~~take immediate control of the hunting device~~ monitor the activities of, and communicate with, the disabled hunter at all times.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter safety, using Commission personnel or other persons at times and in

areas where other competent agencies are unable or unwilling to meet the demand for instruction.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 1991, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) ~~Nothing in this section shall be construed to prohibit the sale of~~ Notwithstanding the provisions of subsection (a) of this section, the lifetime licenses ~~as~~ provided for in ~~G.S. 113-270.1D(b) or G.S. 113-270.2(c)(2).~~ G.S. 113-270.1D(b)(1), (2), and (3) and G.S. 113-270.2(c)(2) may be purchased by or in the name of persons who have not obtained a hunter safety certificate of competency, subject to the requirements of this subsection. Pending satisfactory completion of the hunter safety course, persons who possess ~~such licenses~~ one of the lifetime licenses specified in this subsection may exercise the privileges ~~thereof~~ of the lifetime license only when accompanied by an adult ~~at least 21 years of age~~ who is licensed to hunt in this State. For the purpose of this section, "accompanied" ~~is defined as being able to take immediate control of the hunting device.~~ means that the adult maintains a proximity that enables the adult to monitor the activities of, and communicate with, the young hunter at all times."

SECTION 2. G.S. 113-276(d) reads as rewritten:

"(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting and trapping license requirements of G.S. 113-270.1B(a) and G.S. 113-270.3(a), except the falconry license described in ~~G.S. 113-270.3(b)(4), and the fishing license requirement of G.S. 113-272, if:~~

~~(1) He is accompanied by a responsible adult who is in compliance with applicable license requirements; or~~

~~(2) He is carrying a current and valid license appropriate to the activity which has been issued to one of his parents or to his guardian.~~

G.S. 113-270.3(b)(4). Individuals under 16 may hunt under this exemption, provided that the young hunter is accompanied by an adult who is licensed to hunt in this State. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities of, and communicate with, the young hunter at all times. Upon successfully obtaining the hunter safety certificate of competency required by G.S. 113-270.1A(a), a young hunter may hunt under the license exemption until age 16 without adult accompaniment. Individuals under 16 years of age are exempt from the fishing license requirements of ~~G.S. 113-270.1B~~ G.S. 113-270.1B(a), 113-272, and ~~G.S.~~ 113-271."

SECTION 3. G.S. 113-296 reads as rewritten:

"§ **113-296. Disabled Sportsman Program.**

(a) The Disabled Sportsman Program is established, to be developed and administered by the Wildlife Resources Commission. The Disabled Sportsman Program shall consist of special hunting and fishing activities adapted to the needs of persons with the disabilities described in subsection (b) of this section.

(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, a person must be able to certify through competent medical evidence one of the following disabilities:

(1) Amputation of one or more limbs;
(2) Paralysis of one or more limbs;
(3) Dysfunction of one or more limbs rendering the person unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
(4) Disease, injury, or defect confining the person to a wheelchair, walker, or crutches;
(5) Legal deafness; or
(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and a person loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist.

(c) A person who qualifies under subsection (b) of this section may apply for participation in the Disabled Sportsman Program by completing an application supplied by the Wildlife Resources Commission and by supplying the medical evidence necessary to confirm the person's disability. In order to participate in activities under the Program, each disabled participant may be accompanied by an able-bodied companion, who may also participate in the hunting, fishing, or other activity. The Commission shall charge each disabled participant an ~~annual~~ application fee of ~~ten dollars ($10.00)~~ five dollars ($5.00) for each special hunt for disabled persons for which the disabled hunter applies not to exceed ten dollars ($10.00) annually to defray the cost of processing the application and administering the special activities provided under the Program. The participant and the participant's companion shall also obtain any applicable hunting, fishing, or other special license required for the activities.

(d) In developing the Disabled Sportsman Program, the Wildlife Resources Commission shall:

(1) Establish special seasons and bag limits for hunting all or selected species of wildlife;
(2) Authorize the manner for taking wildlife, consistent with State law;
(3) Permit the use of vehicles and other means of conveyance in areas normally closed to such use;
(4) Set special fishing seasons and size and creel limits for inland fish; and
(5) Permit the use of crossbows or other specially equipped bows by persons incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow, but only during a season for hunting with bow and arrow and only during a special hunt organized and supervised by the Wildlife Resources Commission for the Disabled Sportsman Program; and
(6) Alter any other established rules of the Wildlife Resources Commission pertaining to hunting, fishing, or special activities, as generally applicable or as applicable to game lands, for the purpose of

providing access to disabled persons participating in the Disabled Sportsman Program.

The Wildlife Resources Commission may use its game lands for purposes of conducting special activities for the Disabled Sportsman Program, and may enter into agreements with other landholders for purposes of conducting special activities on private lands.

(e) The Wildlife Resources Commission may establish special activities under the Disabled Sportsman Program for any class or classes of disability described in subsection (b) of this section. The Commission shall publicize these activities through the public media and in the Commission's publications to ensure that disabled persons are notified of the activities and informed about the application process.

(f) The Wildlife Resources Commission shall hold at least four special hunting activities under the Disabled Sportsman Program per calendar ~~year, at least two during the season for taking deer with bow and arrow, and at least two during the season for taking deer with guns.~~ year. The Commission shall alternate the location of these special activities so as to provide equal access to disabled persons in all regions of the State."

SECTION 4. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:04 p.m. on the 27th day of September, 2005.

H.B. 1261 **Session Law 2005-439**

AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE SERVICE, TO CLARIFY THE AUTHORIZED EXPENDITURES FROM THE EMERGENCY TELEPHONE SYSTEM FUND, TO CAP WIRE 911 SERVICE CHARGES, AND TO STUDY ISSUES RELATED TO ARTICLE 1 OF CHAPTER 62A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-21 reads as rewritten:

"§ **62A-21. Definitions.**

As used in this Article:

(1) "Active prepaid wireless telephone service" means a prepaid wireless telephone service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.

~~(1)~~ (1a) "Automatic location identification" or "ALI" means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.

…

(5) "CMRS provider" means a person or ~~entity~~ entity, facilities-based and nonfacilities-based, who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

…

(7a) "GIS mapping" means the development of a computerized geographical display system of roads and structures where emergency response may be required.

…

(9) "Mobile set telephone number" means the number assigned to a CMRS ~~connection.~~connection, including the 10-digit number assigned to a CMRS mobile phone.

(9a) "Prepaid wireless telephone service" means wireless telephone service for which no monthly invoices are received, that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by a CMRS provider or reseller of an agreed upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation unless additional payments are made.

…

(11a) "Primary PSAP" means the first point of reception of a 911 call by a public safety answering point.

(12) "Pseudoautomatic number identification" or "Pseudo-ANI" means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell ~~face.~~ face and is used to identify the approximate location of a wireless caller.

…

(13a) "Shared resources" means any element that is used for both receiving wire line 911 calls and wireless 911 calls and is an eligible expense under G.S. 62A-8 and G.S. 62A-25.

(13b) "Subscriber" means a person who subscribes to a CMRS service or prepaid wireless service.

(14) "Wireless 911 system" means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits ~~911.~~911 and complements a wireless Enhanced 911 system.

…

(15a) "Wireless Enhanced 911 State plan" means a document prepared, maintained, and updated by the Wireless 911 Board that provides for all aspects of the State's integrated wireless Enhanced 911 system, including the Board's determination of permitted uses of moneys from the Wireless Fund and the amounts disbursed from the Fund to CMRS providers and PSAPs.

…."

SECTION 2. G.S. 62A-22 reads as rewritten:

"§ **62A-22. Wireless 911 Board.**

(a) There is created a Wireless 911 Board ("Board"), consisting of 13 members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The State Chief Information Officer or the Chief Information Officer's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Members shall remain in office until their successors are appointed and qualified. Vacancies ~~may~~ shall be filled in the same manner as the original appointment.

(b1) G.S. 14-234 shall apply to members, officers, and employees of the Board. Members, officers, and employees of the Board shall disclose any interest, direct or indirect, they have in any firm or corporation interested in contracting with the Board, and the nature of that interest shall be included in the Board's minutes. A member, officer, or employee of the Board shall not participate in decisions involving parties with whom they have a conflict of interest.

(b2) The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

…."

SECTION 3. Article 2 of Chapter 62A is amended by adding the following new section to read:

"**§ 62A-22.1. Powers and duties of the Board.**

The Wireless 911 Board shall have the following powers and duties:

(1) To levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The service charge is not a tax.

(2) To make and enter into contracts and agreements necessary or incidental to the performance of its duties and powers under this Article, including purchase agreements that are paid with funds from the administrative fee allowed under G.S. 62A-26 and other moneys appropriated to or received by the Board for the wireless Enhanced 911 system.

(3) To accept gifts, grants, or other moneys for purposes of furthering the intent of this Article.

(4) To develop a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs. In constructing and periodically updating the plan, the Board shall monitor trends and advances in wireless Enhanced 911 telecommunications technology,

investigate and utilize development of other resources within the State as part of the wireless Enhanced 911 State plan, including GIS mapping and Voice over Internet Protocol (VoIP), and formulate strategies for the efficient and effective delivery of wireless Enhanced 911 telecommunications services.

(5) To provide or fund advisory services and training for PSAPs in accordance with policies and procedures established by the Board.

(6) To advocate for issues related to wireless Enhanced 911 system functions, features, and operations to improve the delivery of wireless Enhanced 911 services to residents of and visitors to the State.

(7) To take other necessary and proper action to implement the provisions of this Article."

SECTION 4. G.S. 62A-23 reads as rewritten:

"§ **62A-23. Amount of service charge.**

(a) ~~The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection.~~ The rate of ~~such~~ the monthly wireless Enhanced 911 service charge shall ~~initially~~ be set at ~~eighty cents (80¢)~~seventy cents (70¢) per month per each CMRS connection beginning ~~October 1, 1998.~~October 1, 2005. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The ~~service charge may be adjusted by the~~ Board may adjust the service charge ~~beginning July 1, 2000 and every two years thereafter.~~on July 1 of every even-numbered year. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for primary PSAPs, over a reasonable period of time, of the costs allowed in G.S. 62A-25(b) and associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and eligible primary PSAPs over a reasonable period of time, the Board may annually adjust the allocation percentages set forth in G.S. 62A-25(a) and G.S. 62A-25(b), or reallocate funds comprising the Wireless Fund, provided, however, that any adjustment or reallocation shall be consistent with the requirements of the FCC Order.

(b1) The service charge shall also be imposed upon prepaid wireless telephone service subscribers. CMRS providers of prepaid wireless telephone service shall collect and remit to the Board the service charge under one of the following methods:

(1) The CMRS provider shall collect, on a monthly basis, the service charge from each active prepaid wireless telephone service customer whose account balance is equal to or greater than the amount of the service charge; or

(2) The CMRS provider shall divide the total earned prepaid wireless telephone service revenue received by the CMRS provider with respect to each active prepaid wireless telephone service customer in the State within the monthly 911 reporting period by fifty dollars ($50.00) and multiply the quotient by the service charge amount.

…."

SECTION 5. G.S. 62A-24 reads as rewritten:

"§ **62A-24. Management of funds.**

(a) ~~Each~~Except for prepaid wireless telephone service, each CMRS provider, as a part of its monthly billing process, shall collect from its subscribers the wireless Enhanced 911 service charge described in G.S. 62A-23. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial

payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

…."

SECTION 6. G.S. 62A-25 reads as rewritten:

"§ **62A-25. Use of funds.**

(a) ~~Sixty percent (60%)~~Fifty-three percent (53%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) ~~Forty percent (40%)~~Forty-seven percent (47%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to make monthly distributions to eligible primary PSAPs (the ~~"40%~~ "PSAP Fund"). Money from the ~~40%~~PSAP Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, ~~and~~ nonrecurring costs of establishing a wireless Enhanced 911 ~~system.~~system, and expenses related to shared resources. For purposes of this section, shared resources expenses are limited to those expenses identified in this section and G.S. 62A-8 and shall not exceed an amount determined reasonable by the Board. Money from the ~~40%~~PSAP Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The ~~40%~~PSAP Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of eligible primary PSAPs in North Carolina. However, monthly distribution shall be made only to those eligible primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. All monies remaining in this portion of the ~~40%~~ PSAP Fund on ~~January 31~~June 30 of each year will then be evenly distributed to each of the eligible primary PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible primary PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Budget and Management. All monies remaining in this portion of the ~~40%~~PSAP Fund on ~~January 31~~ June 30 of each year will then be distributed to each of the eligible primary PSAPs based on the population served by the primary PSAP.

…

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding the lesser of one hundred percent (100%) of the eligible costs allowed under G.S. 62A-25(b) or one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system. The PSAP budget shall identify revenues and expenditures for eligible expense reimbursements as provided in G.S. 62A-25(b).

…

(g) To receive funds under this section, a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations that are or may be adopted by the FCC pursuant to the FCC Order. A county or municipality that has one or more PSAPs shall submit in writing to the Board information that identifies the PSAPs in the manner required by the FCC Order."

SECTION 7. Article 2 of Chapter 62A of the General Statutes is amended by adding the following new section to read:

"**§ 62A-25.1. Unauthorized use of funds.**

The Board shall give written notice of violation to any CMRS provider or PSAP found by the Board to be using moneys from the Wireless Fund for purposes not authorized by this Article. Upon receipt of notice, the CMRS provider or PSAP shall cease making any unauthorized expenditures. The CMRS provider or PSAP may petition the Board for a hearing on the question of whether the expenditures were unauthorized, and the Board shall grant the request within a reasonable period of time. If, after the hearing, the Board concludes the expenditures were in fact unauthorized, the Board may require the CMRS provider or PSAP to refund the moneys improperly spent within 90 days, and the moneys shall be deposited into the Wireless Fund. If a CMRS provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent moneys, the Board may suspend funding to the provider or PSAP until corrective action is taken."

SECTION 8. Notwithstanding the provisions of G.S. 62A-22(b), to establish staggered terms of the members of the Wireless 911 Board, the terms of Joseph K. Durham, appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners; W. Allen Whitaker (a sheriff) and Don Van Liew (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and Robert Cherry (a chief of police), Philip L. Penny (representing the North Carolina Chapter of the National Emergency Number Association (NENA)), and James R. Montgomery (representing a CMRS provider), appointed by the General Assembly upon the

recommendation of the President Pro Tempore of the Senate, shall expire on June 30, 2005. The vacancies shall be filled in the same manner as the original appointments, and the persons appointed shall serve four-year terms, ending June 30, 2009. The terms of the remaining members of the Board shall expire on June 30, 2006. After the staggered terms have been established, members appointed to the Board thereafter shall serve four-year terms in accordance with G.S. 62A-22(b).

SECTION 9. G.S. 62A-8(b) reads as rewritten:

"(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, training, and compensating dispatchers, and the purchase of mobile communications vehicles, ambulances, fire engines, ~~or~~ other emergency ~~vehicles.~~vehicles, or any other expense not specifically authorized under subsection (a) of this section."

SECTION 10. The maximum 911 charge imposed by a local government under G.S. 62A-4 may not exceed the amount charged by the local government on July 1, 2005, or the amount charged pursuant to a resolution adopted on or before August 15, 2005, that becomes effective on or before December 15, 2005, whichever is greater.

SECTION 11.(a) The Joint Legislative Utility Review Committee shall study the following issues related to Article 1 of Chapter 62A of the General Statutes:

(1) Mechanisms for increased accountability for the collection and spending of 911 charges by local governments.
(2) Modification of what constitutes an authorized expenditure from a local Emergency Telephone System Fund.
(3) Whether to adopt a statewide, uniform 911 charge.
(4) Whether to create a State Emergency Telephone Fund and a formula for distributing those moneys to local governments.
(5) Whether to designate the Community College System as the preferred provider of training for public safety answering point staff.
(6) Any other issues related to the Article the Committee determines are relevant.

SECTION 11.(b) The Committee shall report any findings and recommendations to the General Assembly upon the convening of the 2006 Regular Session of the 2005 General Assembly and upon the convening of the 2007 General Assembly.

SECTION 12. Section 10 of this act becomes effective July 1, 2005. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:08 p.m. on the 27th day of September, 2005.

H.B. 1281 **Session Law 2005-440**

AN ACT TO GRANT CERTAIN COUNTIES THE AUTHORITY TO DEFINE NOXIOUS AQUATIC WEED CONTROL SERVICE DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-301 is amended by adding a new subsection to read:

"(e) The board of commissioners of a county that adjoins or contains a lake, river, or tributary of a river or lake that has an identified noxious aquatic weed problem may define any number of noxious aquatic weed control service districts composed of property that is contiguous to the water or that provides direct access to the water through a shared, certified access site to the water. As used in this subsection, the term "noxious aquatic weed" is any plant organism identified by the Secretary of Environment and Natural Resources under G.S. 113A-222 or regulated as a plant pest by the Commissioner of Agriculture under Article 36 of Chapter 106 of the General Statutes."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:08 p.m. on the 27th day of September, 2005.

H.B. 1029 **Session Law 2005-441**

AN ACT FACILITATING THE ESTABLISHMENT OF LOCAL GOVERNMENT PROGRAMS TO CLEAR STREAMS BY CLARIFYING LOCAL GOVERNMENT LIABILITY FOR SUCH ACTIONS AND TO ALLOW THE VILLAGE OF CLEMMONS AND THE TOWN OF KERNERSVILLE TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS IT MAY COLLECT DELINQUENT PERSONAL AND REAL PROPERTY TAXES.

Whereas, the clearing of obstructions in streams, such as dead trees, fallen tree limbs, root balls, underbrush, and trash and debris furthers the health, safety, and welfare of the State's citizens by allowing such streams to function more efficiently to remove stormwater, thus reducing flooding; and

Whereas, local governments are deterred from engaging in stream-clearing activities by the possibility that they will become legally responsible for regular stream clearing, or the possibility that they will become legally responsible for the impact on private properties of natural events such as flooding, which have never been the legal responsibility of local governments; and

Whereas, many private landowners do not have the resources to clear obstructions from the streams that are located on their property, and it is in the public interest to facilitate the establishment of stream-clearing programs by local governments; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-140.1. Stream-clearing programs.**

(a) A county shall have the authority to remove natural and man-made obstructions in stream channels and in the floodway of streams that may impede the passage of water during rain events.

(b) The actions of a county to clear obstructions from a stream shall not create or increase the responsibility of the county for the clearing or maintenance of the stream, or for flooding of the stream. In addition, actions by a county to clear obstructions from

a stream shall not create in the county any ownership in the stream, obligation to control the stream, or affect any otherwise existing private property right, responsibility, or entitlement regarding the stream. These provisions shall not relieve a county for negligence that might be found under otherwise applicable law.

(c) Nothing in this section shall be construed to affect existing rights of the State to control or regulate streams or activities within streams. In implementing a stream-clearing program, the county shall comply with all requirements in State or federal statutes and rules."

SECTION 2. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-193.1. Stream-clearing programs.**

(a) A city shall have the authority to remove natural and man-made obstructions in stream channels and in the floodway of streams that may impede the passage of water during rain events.

(b) The actions of a city to clear obstructions from a stream shall not create or increase the responsibility of the city for the clearing or maintenance of the stream, or for flooding of the stream. In addition, actions by a city to clear obstructions from a stream shall not create in the city any ownership in the stream, obligation to control the stream, or affect any otherwise existing private property right, responsibility, or entitlement regarding the stream. These provisions shall not relieve a city for negligence that might be found under otherwise applicable law.

(c) Nothing in this section shall be construed to affect otherwise existing rights of the State to control or regulate streams or activities within streams. In implementing a stream-clearing program, the city shall comply with all requirements in State or federal statutes and rules."

SECTION 3.(a) G.S. 160A-314(a1) reads as rewritten:

"(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure

that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(4) A city may adopt an ordinance providing that any fee imposed under this subsection may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

SECTION 3.(b) G.S. 160A-314(c) reads as rewritten:

"(c) Except as provided in subsections (a1) and (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems."

SECTION 4. This act is effective when it becomes law and applies to stream-clearing activities commenced on or after that date. Section 3 of this act applies only to the Town of Kernersville and the Village of Clemmons.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 3:10 p.m. on the 27th day of September, 2005.

S.B. 1134 **Session Law 2005-442**

AN ACT TO ESTABLISH THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE; TO DIRECT THE COMMISSION TO STUDY ISSUES RELATED TO GLOBAL WARMING, THE EMERGING CARBON ECONOMY, AND WHETHER IT IS APPROPRIATE AND DESIRABLE FOR THE STATE TO ESTABLISH A GLOBAL WARMING POLLUTANT REDUCTION GOAL; AND, IF THE COMMISSION DETERMINES THAT THE ESTABLISHMENT OF A GOAL IS APPROPRIATE AND DESIRABLE, TO AUTHORIZE THE COMMISSION TO DEVELOP A RECOMMENDED GOAL.

The General Assembly of North Carolina enacts:

SECTION 1. Commission Established; Membership. – The Legislative Commission on Global Climate Change is hereby established. The Commission shall consist of 34 members as follows:

(1) Nine members appointed by the President Pro Tempore of the Senate.
(2) Nine members appointed by the Speaker of the House of Representatives.
(3) The President of Duke Power or the President's designee.
(4) The President of Progress Energy or the President's designee.
(5) The President of the North Carolina Citizens for Business and Industry or the President's designee.
(6) The President of the Manufacturers and Chemical Industry Council of North Carolina or the President's designee.
(7) The President of the North Carolina Farm Bureau Federation or the President's designee.
(8) The President of the North Carolina Forestry Association or the President's designee.
(9) The Southeast Regional Director of Environmental Defense or the Regional Director's designee.
(10) The Executive Director of the Southern Alliance for Clean Energy or the Executive Director's designee.
(11) The Executive Director of the North Carolina Coastal Federation or the Executive Director's designee.
(12) The Executive Director of the North Carolina Conservation Council or the Executive Director's designee.
(13) The Dean of the Nicholas School of the Environment and Earth Sciences, Duke University, or the Dean's designee.
(14) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
(15) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
(16) The Director of the Carolina Environmental Program at the University of North Carolina at Chapel Hill or the Director's designee.
(17) The Distinguished Research Professor (with expertise in sea level change), Department of Geology at East Carolina University.
(18) The North Carolina State Climatologist.

SECTION 2. Cochairs. – The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 3. Quorum. – A quorum of the Commission shall consist of 18 members.

SECTION 4. Vacancies. – Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 5. Purpose and Duties. – The Commission shall have the following purposes and duties:

(1) The Commission shall conduct an in-depth examination of issues related to global climate change. This examination shall include all of the following:
   a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.
   b. A review of actions taken by the federal government and by other states to address global warming.
   c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.
   d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.
   e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.
   f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.
   g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

(2) If, in the course of its examination, the Commission determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.

(3) In conducting its examination of global climate change, the Commission shall consider and integrate the findings and recommendations of the study of issues related to the development and implementation of standards and plans to control emissions of carbon dioxide required by Section 13 of S.L. 2002-4.

(4) Based on its examination of global climate change, the Commission shall develop findings and recommendations, including any legislative proposals it determines to be appropriate, for consideration by the General Assembly.

SECTION 6. Additional Duties. – The Commission may work cooperatively with other state and national governments to organize a forum on global climate change, including its causes, impacts, challenges, and opportunities in the southeastern United States. The Commission may also work cooperatively with other State agencies with respect to the agencies' areas of responsibilities regarding greenhouse gas emissions and climate change.

SECTION 7. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

SECTION 9. Consultants. – The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 10. Meetings. – The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 11. Report. – The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 November 2006, at which time the Commission shall terminate.

SECTION 12. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

SECTION 13. Effective Date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of August, 2005.

Became law upon approval of the Governor at 3:15 p.m. on the 27th day of September, 2005.

S.B. 998 **Session Law 2005-443**

AN ACT TO IMPLEMENT A PROVISION OF THE COASTAL HABITAT PROTECTION PLAN BY PROVIDING FOR GREATER FLEXIBILITY IN THE USE OF FUNDS FROM THE RIPARIAN BUFFER RESTORATION FUND TO CONSTRUCT ALTERNATIVE MEASURES TO REDUCE NUTRIENT LOADING AND BY PROVIDING THAT IF A LAND-DISTURBING ACTIVITY LEAVES AN EXPOSED SLOPE, THE SLOPE SHALL BE PLANTED WITH TEMPORARY OR PERMANENT GROUND COVER WITHIN TWENTY-ONE CALENDAR DAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.21 reads as rewritten:

"§ **143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than ~~the~~ a riparian buffer that is lost and for compensatory mitigation fees paid to the Department. The Fund shall be administered by ~~the Division of Water Quality within~~ the Department. Moneys shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than ~~the riparian buffer that is lost to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers.~~a riparian buffer. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

SECTION 2. G.S. 113A-57(2) reads as rewritten:

"§ **113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

…

(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~15 working days or 30~~21 calendar days of completion of any phase of grading, ~~whichever period is shorter,~~ be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

…."

SECTION 3. Sections 1 and 3 of this act are effective when it becomes law. Section 2 of this act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 31st day of August, 2005.

Became law upon approval of the Governor at 3:16 p.m. on the 27th day of September, 2005.

S.B. 725 **Session Law 2005-444**

AN ACT TO MODIFY THE TUITION ASSISTANCE PROGRAM FOR MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 127A-193 reads as rewritten:

"§ **127A-193. Benefit.**

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed ~~two thousand dollars ($2,000) per academic year~~ the highest amount charged by a State educational institution per academic year or a lesser amount, as prescribed by the Secretary, to remain within the funds appropriated, to qualifying members of the North Carolina national guard. Benefits shall be payable for

a period of one academic year at a time, renewable at the option of the ~~Secretary for a maximum of eight thousand dollars ($8,000).~~Secretary."

SECTION 2. G.S. 127A-195(c) reads as rewritten:

"(c) All tuition benefit disbursements shall be made to the business or trade school or State or private educational institution concerned, for credit to the tuition account of each recipient."

SECTION 3. G.S. 127A-195 is amended by adding a new subsection to read:

"(f) Any balance of the monetary educational assistance grant up to the maximum for the academic year remaining after tuition is paid pursuant to subsection (c) of this section may be disbursed to the recipient as reimbursement for required course books and materials. The manner of obtaining the reimbursement payment for these required books and materials shall be as prescribed by the Secretary."

SECTION 4. This act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 11:17 a.m. on the 28th day of September, 2005.

S.B. 1117 **Session Law 2005-445**

AN ACT TO ENACT THE 2005 SOLDIER, SAILOR, MARINE, AIRMEN, AND GUARDSMEN SUPPORT ACT.

Whereas, North Carolina is the home of Fort Bragg, and the XVIII Airborne Corps, with the 82nd Airborne Division as the Army's premier force to project power anywhere in the world on little or no notice; and

Whereas, Fort Bragg is the home of the U.S. Army Special Operations Command, the U.S. Army John F. Kennedy Special Warfare Center and School, and of all Army Special Forces soldiers; and

Whereas, Pope Air Force Base and the 317th Airlift Wing play a vital role in our nation's defense by providing the means to deliver troops and equipment wherever needed in the world; and

Whereas, North Carolina is the home of Camp Lejeune, one of the nation's largest Marine Corps bases, and provides the training necessary to keep the Marines in a high state of readiness for any mission; and

Whereas, North Carolina is the home of Seymour Johnson Air Force Base, the base of an active air combat wing that can deploy worldwide on short notice and immediately generate combat power; and

Whereas, North Carolina is the home of the largest Marine Corps air station in the world, Cherry Point Marine Corps Air Station, and is the home of the 2nd Marine Corps Aircraft Wing, the Naval Air Depot, and the Marine Corps Air Station at New River; and

Whereas, North Carolina is the home of several United States Coast Guard stations, including the United States Coast Guard Air Station at Elizabeth City, with missions that include search and rescue, international ice patrol, maritime law enforcement, aids to navigation, and environmental response; and

Whereas, North Carolina ranks high in the United States with 4.5% of the total military payroll, and defense spending in the 2002 federal fiscal year in North Carolina was approximately $6.7 billion; and

Whereas, the military in North Carolina materially affects North Carolina's economy, generating approximately $18 billion per year; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. FINDINGS.

SECTION 1.1. The General Assembly expresses its appreciation to the Department of Defense for the military bases and installations that are located in the State of North Carolina and that are vital parts of the national defense of the United States.

SECTION 1.2. The General Assembly declares its full support for its military installations and acknowledges the important role of the military in North Carolina's economy.

SECTION 1.3. The General Assembly has enacted several recent acts to accommodate the military and intends to continue:

(1) S.L. 2004-203, Section 80 (deployed personnel get extension to renew occupational licenses).

(2) S.L. 2004-130 (active duty personnel get in-State tuition rate at universities and community colleges; dependent relative continues to receive in-State rate if member reassigned; nonresident North Carolina National Guard members get in-State rate).

(3) S.L. 2003-152 (DMV to have a military designation for drivers licenses; allow renewal by mail).

(4) S.L. 2003-248 (allow redaction of personal identifying information from military discharges filed with register of deeds).

(5) S.L. 2003-300 (extend drivers license to 90 days following end of deployment; waive civil penalties and fees for lapsed motor vehicle liability insurance; extend property tax filing deadline; extend property listing deadline; grant full refund of tuition and fees from UNC system and community colleges if deployed; waive repayment of North Carolina Legislative Tuition Grants if student called to active duty).

PART IA. MILITARY MORALE, RECREATION AND WELFARE FUNDS, CONSERVATION GRANT FUNDS.

SECTION 1A.1.(a) There is appropriated from the General Fund to a Reserve for the Military Morale, Recreation, and Welfare Fund in the Office of State Budget and Management for the 2006-2007 fiscal year the sum of one million dollars ($1,000,000).

SECTION 1A.1.(b) The Office of State Budget and Management shall distribute for the purposes described in this section the amount appropriated by subsection (a) of this section. That amount shall be distributed to each military installation on a per capita basis.

SECTION 1A.1.(c) Funds distributed to a military installation exchange under this section must be deposited in the Military Morale, Recreation, and Welfare Fund for that installation and used only for community services and other expenditures

to improve quality of life programs for military members and their families in North Carolina.

SECTION 1A.2. There is appropriated from the General Fund to the Conservation Grant Fund established under G.S. 113A-232 for the 2006-2007 fiscal year the sum of one million dollars ($1,000,000). Funds distributed to the Conservation Grant Fund under this section must be used for compatible land use and conservation easement type acquisitions of land adjacent to military bases and flyways.

SECTION 1A.3. This part becomes effective July 1, 2006.

PART II. ENCOURAGE CERTAIN OCCUPATIONAL LICENSING BOARDS TO DEVELOP POLICIES FOR EXPEDITING THE LICENSING PROCESS FOR MILITARY SPOUSES.

SECTION 2.1. Findings. – The General Assembly finds that:

(1) According to the Department of Defense, the unemployment rate of military spouses is three times greater than the average American spouse in the same age group;

(2) The mobile military lifestyle causes some military spouses to endure long periods of unemployment and, thus, loss of income; and

(3) Professional licensing requirements often differ among states, which in turn may limit career advancement or deter reentry into the workforce for military families moving to new locations.

SECTION 2.2.(a) In an effort to support military personnel and their families, each occupational licensing board in this State is encouraged to develop policies that would make the licensing process for military spouses more efficient and expedient. In expediting the licensing process, an occupational licensing board shall review its current licensing process especially as it relates to military personnel. After reviewing the licensing process, the licensing board may develop and implement policies regarding licensure that provide for assistance to military spouses and dependents to ensure a smooth process when military families move into this State or are transferred out of this State. Implementation of these policies shall not apply to occupational licensing boards regulating health care professionals.

SECTION 2.2.(b) This section does not apply to health professions or to teaching.

PART III. NEIT/FIT.

SECTION 3. G.S. 115D-5.1 is amended by adding a new subsection to read:

"(b1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt rules and guidelines that allow the New and Expanding Industry Training Program and the Focused Industrial Training Program to use funds appropriated for those programs to support training projects for the various branches of the United States Armed Forces."

PART IV. ALLOWING MEMBERS OF THE ARMED FORCES TO TERMINATE RENTAL AGREEMENTS EARLY WHEN BEING DEPLOYED.

SECTION 4.1. G.S. 42-45 reads as rewritten:

"§ **42-45. Early termination of rental agreement by military personnel.**

(a) Any member of the United States Armed Forces who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the

location of the dwelling unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the United States Armed Forces, may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer.

(a1) Any member of the United States Armed Forces who is deployed with a military unit for a period of not less than 90 days may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer. Termination of a lease pursuant to this subsection is effective 30 days after the first date on which the next rental payment is due or 45 days after the landlord's receipt of the notice, whichever is shorter, and payable after the date on which the notice of termination is delivered.

(a2) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy except the liquidated damages provided in subsection (b) of this section. If a member terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind shall be due.

(b) In consideration of early termination of the rental agreement, the tenant is liable to the landlord for liquidated damages provided the tenant has completed less than nine months of the tenancy and the landlord has suffered actual damages due to loss of the tenancy. The liquidated damages shall be in an amount no greater than one month's rent if the tenant has completed less than six months of the tenancy as of the effective date of termination, or one-half of one month's rent if the tenant has completed at least six but less than nine months of the tenancy as of the effective date of termination.

(c) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances. Nothing in this section shall affect the rights established by G.S. 42-3."

SECTION 4.2. Section 4.1 of this act applies to rental agreements entered into or renewed on or after the date this act becomes law.

PART V. DIRECTING THE DEPARTMENT OF PUBLIC INSTRUCTION TO STUDY THE FEASIBILITY OF A LIAISON TO THE MILITARY BASES IN NORTH CAROLINA.

SECTION 5. The Department of Public Instruction shall study the feasibility of designating an employee to serve as its liaison to the military bases in North Carolina and report to the 2006 Regular Session of the 2005 General Assembly. It shall be the responsibility of the liaison to facilitate communication and cooperation between (i) military personnel and their families and the Department and (ii) military personnel and their families and the North Carolina public schools.

PART VI. DIRECTING THE STATE BOARD OF EDUCATION AND THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO REVIEW AND REVISE THE POLICIES AND PROCEDURES REGARDING CREDIT FOR

HIGH SCHOOL COURSES TO ENSURE THAT ALL STUDENTS, ESPECIALLY THE CHILDREN OF MILITARY PERSONNEL, RECEIVE CREDIT FOR COURSES TAKEN OUT-OF-STATE.

SECTION 6. The State Board of Education shall review and revise the policies and practices related to students receiving credit for high school courses to ensure that all students, especially the highly mobile children of members of the armed forces, receive credit in the North Carolina public schools for comparable courses taken out-of-State. The State Board shall report the results of this review and any actions taken as a result of the study to modify its policies and practices to the Joint Legislative Education Oversight Committee prior to December 15, 2005.

PART VII. ALLOWING IN-STATE TUITION AT STATE UNIVERSITIES AND COMMUNITY COLLEGES FOR RETIRED ARMED SERVICES PERSONNEL AND THEIR DEPENDENTS.

SECTION 7. G.S. 116-143.3 reads as rewritten:

"§ **116-143.3. Tuition of ~~active duty personnel in the armed services.~~armed services personnel and their dependents.**

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

(1) The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(2) The term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing.

(3) The term "tuition assistance" shall be used as defined in the United States Department of Defense Directive 1322.8, implementing 10 U.S.C. § 2007.

(b) Any active duty member of the armed services qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the in-State tuition rate and applicable mandatory fees for enrollments while the member of the armed services is abiding in this State incident to active military duty in this State. In the event the active duty member of the armed services is reassigned outside of North ~~Carolina,~~ Carolina or retires, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is reassigned.

(b1) (b2) Repealed by Session Laws 2004-130, s. 1, effective August 1, 2004.

(c) Any dependent relative of a member of the armed services who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the armed services is reassigned outside of North ~~Carolina,~~ Carolina or retires, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative is

continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is ~~reassigned.~~reassigned or retires.

(d) ~~The burden of proving entitlement to the benefit of this section shall lie with the applicant therefor.~~The person applying for the benefit of this section has the burden of proving entitlement to the benefit.

(e) A person charged less than the out-of-state tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefit of G.S. 116-143.1(g), (h), (i), (j), (k), or (l)."

PART VIII. A STUDENT IS ELIGIBLE TO BE CONSIDERED FOR ADMISSION INTO THE SCHOOL OF SCIENCE AND MATHEMATICS IF THE STUDENT'S PARENT IS AN ACTIVE DUTY MEMBER OF THE ARMED SERVICES STATIONED IN THIS STATE AT THE TIME THE STUDENT'S APPLICATION IS SUBMITTED.

SECTION 8.1. G.S. 116-235(b)(1) reads as rewritten:

"(1) Admission of Students. – The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by ~~G.S. 116-143.1(a)(1);~~ G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the armed services, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of rising high school juniors offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission."

SECTION 8.2. This part is effective when it becomes law and applies to the 2005-2006 academic year and each subsequent academic year.

PART IX. EFFECTIVE DATE.

SECTION 9. Except as provided otherwise, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of August, 2005.

Became law upon approval of the Governor at 11:17 a.m. on the 28th day of September, 2005.

H.B. 1076 **Session Law 2005-446**

AN ACT TO DIRECT THE STATE BOARD OF EDUCATION TO ADOPT STANDARDS FOR ALTERNATIVE LEARNING PROGRAMS, AND TO REQUIRE LOCAL BOARDS OF EDUCATION TO DEVELOP PROPOSALS THAT ARE SUBMITTED TO THE STATE BOARD OF EDUCATION BEFORE ESTABLISHING ANY ALTERNATIVE LEARNING PROGRAM OR ALTERNATIVE SCHOOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12(24) reads as rewritten:

"§ **115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

…

(24) Duty to Develop ~~Policies and Guidelines~~ Standards for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. – The State Board of Education shall adopt ~~guidelines~~ standards for assigning students to alternative learning programs. These ~~guidelines~~ standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt ~~guidelines~~ standards to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans and proposals for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative

programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

…."

SECTION 2. Article 8C of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"**§ 115C-105.47A. Proposals to establish alternative learning programs or alternative schools.**

(a) Before establishing any alternative learning program or alternative school, the local board of education shall develop a proposal to implement the program or school that includes all of the following:

(1) The educational and behavioral goals for students assigned to the program or school.

(2) The policies and procedures for the operation of the program or school based on the State Board's standards adopted under G.S. 115C-12(24). The policies and procedures shall address the assignment of students to the program or school.

(3) Identified strategies that will be used to improve student achievement and behavior.

(4) Documentation that similar programs and schools in or out of the State, or both, have demonstrated success in improving the academic achievement and behavior of students assigned to them.

(5) The estimated actual cost of operating the program or school. To the extent practicable, this shall include the cost of:

a. Staffing the program or school with teachers who have at least four years' teaching experience and who have received an overall rating of at least above standard on a formal evaluation and are certified in the areas and grade levels being taught;

b. Providing optimum learning environments, resources and materials, and high quality, ongoing professional development that will ensure students who are placed in the program or school are provided enhanced educational opportunities in order to achieve their full potential;

c. Providing support personnel, including school counselors, psychiatrists, clinical psychologists, social workers, nurses, and other professionals to help students and their families work out complex issues and problems;

d. Maintaining safe and orderly learning environments; and

e. Providing transitional supports for students exiting the program or school and reentering the referring school.

(6) Documented support of school personnel and the community for the implementation of the program or school.

(b) After the local board completes the proposal under subsection (a) of this section, the board shall submit the proposal to the State Board of Education for its review. The State Board shall review the proposal expeditiously and, if appropriate, may offer recommendations to modify the proposal. The local board shall consider any recommendations made by the State Board before implementing the alternative learning program or alternative school."

SECTION 3. G.S. 115C-47(32a) reads as rewritten:

"§ **115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

…

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. – Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's ~~policies and guidelines~~ standards developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

…."

SECTION 4. Before implementing success centers or any other alternative learning program or alternative school in New Hanover County, the New Hanover Board of Education shall comply with G.S. 115C-105.47A established in Section 2 of this act. The State Board of Education shall submit to the Joint Legislative Education Oversight Committee a copy of the proposal submitted by the New Hanover Board of Education and a copy of any recommendations made by the State Board.

SECTION 5. Nothing in this act requires the North Carolina General Assembly to appropriate funds for the implementation of alternative learning programs or alternative schools.

SECTION 6. This act is effective when it becomes law. Except as provided in Section 4 of this act, this act applies to any new alternative learning program or alternative school to be implemented beginning with the 2006-2007 school year.

In the General Assembly read three times and ratified this the 29th day of August, 2005.

Became law upon approval of the Governor at 12:44 p.m. on the 29th day of September, 2005.

S.B. 681 **Session Law 2005-447**

AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a county to:

(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the county regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under Article 18 of this Chapter."

SECTION 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-458.5. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:

(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the city regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under this Article.

(5) Regulate and protect streets under Article 15 of this Chapter."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 12:45 p.m. on the 29th day of September, 2005.

H.B. 99 **Session Law 2005-448**

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT AND TO CREATE THE STUDY COMMITTEE ON WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is established the Study Committee on Workers' Compensation Benefits. The Committee shall study disability benefits available under the Workers' Compensation Act, including the following:

(1) The appropriate coverage and benefit levels, including the level of scheduled payments under G.S. 97-31, the appropriateness of

cost-of-living adjustments, and a comparison of workers' compensation benefits in other states.

(2) How the workers' compensation system functions with other disability benefits, including social security and private disability.

(3) Employment issues and their relationship to the current workers' compensation system.

(4) The appropriate manner for compensation related to exposure to asbestos or silica.

(5) The manner and duration of medical benefits.

(6) Any other issues the Committee deems relevant under the workers' compensation system.

SECTION 1.(b) The Study Committee on Workers' Compensation Benefits shall consist of 12 members, appointed as follows:

(1) Six appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) Six appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Vacancies in membership shall be filled by the original appointing authority. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 1.(c) Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Committee, and the expenses relating to clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.(d) The Committee shall report to the 2006 Regular Session of the 2005 General Assembly upon its convening and shall make its final report to the 2007 General Assembly upon its convening. Progress and final reports of the Commission may include recommended legislation. The Committee shall terminate upon the convening of the 2007 General Assembly.

SECTION 1.(e) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Committee established by this act.

SECTION 2. G.S. 97-12 reads as rewritten:

"§ **97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.**

No compensation shall be payable if the injury or death to the employee was proximately caused by:

(1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or

(2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or

(3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury compensation shall be reduced ten percent (10%).

"Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance."

SECTION 3. G.S. 97-17(b) reads as rewritten:

"(b) The Commission shall not approve a settlement agreement under this section, unless all of the following conditions are satisfied:

(1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties and of any person, including a health benefit plan that paid medical expenses of the employee have been considered.

(2) The settlement agreement contains a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes, and a list of medical expenses, if any, that will be paid by the employer under the settlement agreement.

(3) The settlement agreement contains a finding that the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses.

It is not necessary, however, to satisfy the condition in subdivision (2) of this subsection when in the settlement agreement the employer agrees to pay all medical expenses of the employee related to the injury to the date of the settlement agreement."

SECTION 4. G.S. 97-18 reads as rewritten:

"§ **97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer or insurer admits the employee's right to compensation, the first installment of compensation payable by the employer shall become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been

suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer or insurer denies the employee's right to compensation, the employer or insurer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable additional time as the Commission may allow, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may deny the claim in good faith or initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due 10 days from the day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the

Commission determines that payment in installments shall be made monthly or in some other manner.

(f) The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

(g) If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(h) Within 16 days after final payment of compensation has been made, the employer or insurer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer or insurer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer or insurer a civil penalty in the amount of twenty-five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission.

(j) The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c), or (d) of this section. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not, within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

(1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under subsection (b) of this section.

(2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with subsection (c) of this section.

(3) Initiate payments without prejudice and without liability and satisfy the requirements of subsection (d) of this section.

For purposes of this subsection, reasonable sanctions shall not prohibit the employer or insurer from contesting the compensability of or its liability for the claim."

SECTION 5. G.S. 97-26 is amended by adding a new subsection to read:

"(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article."

SECTION 6.1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ **97-25.6. Reasonable access to medical information.**

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer or insurer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer or insurer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.

Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.

An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense."

SECTION 6.2. G.S. 97-25 reads as rewritten:

"§ **97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. ~~Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or~~

~~information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee.~~ In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

SECTION 7. G.S. 97-82(a) reads as rewritten:

"(a) If the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Commission.

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by ~~a full and complete medical report,~~ the material medical and vocational records, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents."

SECTION 8. G.S. 97-88.2 is amended by adding a new subsection to read:

"(a1) When a person is convicted under subsection (a) of this section, the Commission may enter such orders as necessary to ensure that the person convicted does not benefit from the unlawful conduct."

SECTION 9. It is the intent of the General Assembly to provide the North Carolina Industrial Commission with adequate resources by establishing new positions to assist the Commission in performing its important task.

SECTION 10. Sections 2, 4, and 8 of this act become effective October 1, 2005. Sections 3, 5, 6, 6.1, 6.2, and 7 of this act are effective when this act becomes law

and apply to claims pending and filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 12:46 p.m. on the 29th day of September, 2005.

H.B. 1121 **Session Law 2005-449**

AN ACT TO PROVIDE FOR THE MERGER OF A HOSPITAL AUTHORITY CREATED BY A CITY AND A CHARITABLE OR RELIGIOUS CORPORATION OR A HOSPITAL AUTHORITY IN THE COUNTY IN WHICH THE CITY IS LOCATED AND RELATING TO PUBLIC HOSPITAL INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55A of the General Statutes is amended by adding the following new section to read:

"§ **55A-11-10. Merger with certain charitable or religious corporation or hospital authority.**

(a) A hospital authority created by a city may merge into a charitable or religious corporation having its principal office in the county in which the city is located, under a plan of merger approved by the city and the county and by a majority of the members of the board of commissioners of such authority and by or for the corporation as provided in G.S. 55A-11-03.

(b) A hospital authority created by a city may merge into a hospital authority created by the county in which the city is located, pursuant to a plan of merger approved by the city and the county and by a majority of the members of the board of commissioners of each authority.

(c) The plan of merger shall include all of the following:

(1) The name of the city hospital authority and the charitable or religious corporation or the county hospital authority planning to merge and the name of the surviving charitable or religious corporation or county hospital authority into which such city hospital authority plans to merge.

(2) The terms and conditions of the merger.

(3) Any amendments to the articles or certificate of incorporation or bylaws of the surviving charitable or religious corporation or the surviving county hospital authority to be effected by the merger.

(4) Other provisions relating to the merger.

(d) After the plan of merger is approved, the surviving charitable or religious corporation or the surviving county hospital authority shall deliver to the Secretary of State for filing articles of merger that include all of the following:

(1) The plan of merger.

(2) In the case of a merger of a city hospital authority into a charitable or religious corporation, a statement that the plan of merger was approved by the city and by a majority of the members of the board of commissioners of the city hospital authority and the statements required under G.S. 55A-11-04(a)(2), (3), or (4); or

(3) In the case of a merger of a city hospital authority into a county hospital authority, a statement that the plan of merger was approved by the city and the county and a majority of each of the boards of commissioners of the authorities.

(e) A merger takes effect upon the effective date of the articles of merger.

(f) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(g) All of the following shall occur upon an effective merger under this section:

(1) The separate existence of the city hospital authority that merges into the charitable or religious corporation or into the county hospital authority ceases.

(2) The title to all real estate and other property owned by the hospital authority is vested in the surviving charitable or religious corporation or in the surviving county hospital authority without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger.

(3) The surviving charitable or religious corporation or the surviving county hospital authority has all liabilities and obligations of the city hospital authority and the charitable or religious corporation or the county hospital authority party to the merger.

(4) A proceeding pending by or against the city hospital authority and the charitable or religious corporation or the county hospital authority party to the merger may be continued as if the merger did not occur or the surviving charitable or religious corporation or the surviving county hospital authority may be substituted in the proceeding for the city hospital authority whose existence ceased.

(5) The articles or certificate of incorporation and bylaws of the surviving charitable or religious corporation or the surviving county hospital authority are amended to the extent provided in the plan of merger.

(6) Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a city hospital authority that has merged into a charitable or religious corporation or into a county hospital authority and that takes effect or remains payable after the merger, inures to the surviving charitable or religious corporation or the surviving county hospital authority unless the will or other instrument otherwise specifically provides.

(h) A merger pursuant to the provisions of this section will not be deemed to be a sale or conveyance of a hospital facility under or pursuant to G.S. 131E-8, 131E-13, or 131E-14 of the Municipal Hospital Act (Part 1, Article 2, Chapter 131E of the General Statutes) and G.S. 131E-13(d) will not be applicable to such merger."

SECTION 2. This act applies only to the merger of a hospital authority formed by a city in a county with a population of less than 150,000 as of the most recent U.S. Census and either (i) a charitable or religious corporation formed on or before the effective date of this act having its principal office located in such county as of the effective date of this act, or (ii) a hospital authority formed after the effective date of this act by the county in which the city is located.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 12:47 p.m. on the 29th day of September, 2005.

H.B. 686 **Session Law 2005-450**

AN ACT TO UPDATE THE LANGUAGE OF CHAPTER 168 OF THE GENERAL STATUTES REGARDING PERSONS WITH DISABILITIES AND TO CLARIFY THE LAW ALLOWING SERVICE ANIMALS IN TRAINING TO ACCESS PUBLIC FACILITIES AND CONVEYANCES WHEN ACCOMPANIED BY A PERSON WHO TRAINS SERVICE ANIMALS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 168 of the General Statutes reads as rewritten:

"**Chapter 168.**

"**~~Handicapped Persons.~~Persons with Disabilities.**

"Article 1.

"Rights.

"§ **168-1. Purpose and definition.**

The State shall encourage and enable ~~handicapped~~ persons with disabilities to participate fully in the social and economic life of the State and to engage in remunerative employment. ~~The definition of "handicapped persons" shall include those individuals with physical, mental and visual disabilities. For the purposes of this Article the definition of "visually impaired" in G.S. 111-11 shall apply.~~ For purposes of this Article, the term "person with a disability" shall have the same meaning as set forth in G.S. 168A-3(7a).

"§ **168-2. Right of access to and use of public places.**

~~Handicapped persons~~ Persons with disabilities have the same right as ~~the able-bodied~~ persons without disabilities to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of Commerce shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services.

"§ **168-3. Right to use of public conveyances, accommodations, etc.**

~~The handicapped and physically disabled~~ Persons with disabilities are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

"§**§ 168-4, 168-4.1:** Repealed by Session Laws 1985, c. 514, s. 1.

"§ **168-4.2. May be accompanied by service animal.**

(a) ~~Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, hearing impaired person, as defined in G.S. 8B-1(2), or person with a seizure disorder has the right to be accompanied by a service animal especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied.~~ Every person with a disability has the right to be accompanied by a service animal trained to assist the person with his or her specific disability in any of the places listed in G.S. 168-3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in ~~G.S. 168-3 but may not occupy a seat in any of these places.~~ G.S. 168-3. ~~The service animal may accompany that animal's trainer during training sessions in any of the places listed in G.S. 168-3.~~

~~A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function.~~

(b) An animal in training to become a service animal may be taken into any of the places listed in G.S. 168-3 for the purpose of training when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training. The trainer shall be liable for any damage caused by the animal while using a public conveyance or on the premises of a public facility or other place listed in G.S. 168-3.

"§ **168-4.3. Training and registration of service animal.**

The Department of Health and Human Services, shall adopt rules for the registration of service animals and shall issue registrations to a ~~visually impaired person, a hearing impaired person, a mobility impaired person, or a person with a seizure disorder~~ person with a disability who makes application for registration of an animal that serves as a service ~~animal.~~ animal or to a person who is training an animal as a service animal.

The rules adopted regarding registration shall require that the animal be trained or be in training as a service ~~animal by an appropriate agency,~~ animal. ~~and that the~~ The rules shall provide that the certification and registration ~~be permanent~~ need not be renewed while the animal is serving or training with the person applying for the registration. ~~for the particular animal and need not be renewed while that particular animal serves the person applying for registration as a service animal.~~ No fee may be charged the person for the application, registration, tag, or replacement in the event the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities.

"§ **168-4.4. Responsibility for service animal.**

~~The visually impaired person, hearing impaired person, mobility impaired person, or person with a seizure disorder~~ Neither a person with a disability who is accompanied by a service ~~animal~~ animal, nor a person who is training a service animal, may ~~not~~ be required to pay any extra compensation for the animal. The person has all the

responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any animal, including liability for any damage done by the animal.

"§ **168-4.5. Penalty.**

It is unlawful to disguise ~~a dog as an assistance dog, or to deprive a visually impaired person, a hearing impaired person, or a mobility impaired person~~ an animal as a service animal or service animal in training. It is unlawful to deprive a person with a disability or a person training a service animal of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, or of any rights or privileges granted the general public with respect to being accompanied by ~~dogs,~~ animals or to charge any fee for the use of the ~~assistance dog.~~ service animal. Violation of this section shall be a Class 3 misdemeanor.

"§ **168-4.6. Donation of dogs for training.**

Dogs impounded by a local dog warden that are not redeemed shall be donated to a nonprofit agency engaged in the training of ~~assistance~~ service dogs, upon the agency's request.

~~"§ 168-5. Traffic and other rights of persons using certain canes.~~

~~The driver of a vehicle approaching a visually impaired pedestrian who is carrying a cane predominantly white or silver in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian.~~

"§ **168-6:** Repealed by Session Laws 1985, c. 571, s. 3.

"§**§ 168-7, 168-7.1:** Repealed by Session Laws 1985, c. 514, s. 1.

"§ **168-8. Right to habilitation and rehabilitation services.**

~~Handicapped persons~~ A person with a disability shall be entitled to such habilitation and rehabilitation services as available and needed for the development or restoration of their capabilities to the fullest extent possible. Such services shall include, but not be limited to, education, training, treatment and other services to provide for adequate food, clothing, housing and transportation during the course of education, training and treatment. ~~Handicapped persons~~ A person with a disability shall be entitled to these rights subject only to the conditions and limitations established by law and applicable alike to all persons.

"§ **168.9. Right to housing.**

Each ~~handicapped~~ person with a disability who is a citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes, and no person or group of persons, including governmental bodies or political subdivisions of the State, shall be permitted, or have the authority, to prevent any ~~handicapped~~ person with a disability who is a ~~citizen, on the basis of his or her handicap,~~citizen from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with provisions of Chapter 122C of the General Statutes.

"§ **168-10. Eliminate discrimination in treatment of ~~handicapped and disabled.~~ persons with disabilities.**

Each ~~handicapped person~~ person with a disability shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of the person's ~~handicap,~~ disability, shall deny such coverage or benefits. The availability of coverage or benefits shall not be denied solely because of the ~~handicap;~~ disability; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other persons, in

accordance with actuarial and underwriting principles and other coverage provisions prescribed in Chapter 58 of the General Statutes. No insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes shall be prohibited from excluding by waiver or otherwise, any preexisting conditions from coverage as prescribed in G.S. 58-51-15(a)(2)b.

"§**§ 168-11 through 168-13:** Reserved for future codification purposes.

"Article 2.

"Vocational Rehabilitation.

"§ **168-14. Vocational rehabilitation services for deaf persons.**

The Department of Health and Human Services shall promote the employment of deaf persons in this State. The Department shall assist deaf persons whose disability limits employment opportunities in obtaining gainful employment commensurate with their abilities and in maintaining such employment.

The Department, in furtherance of these objectives, shall maintain statistics regarding trades and occupations in which deaf persons are employed.

The Department shall attempt to employ deaf persons in its vocational rehabilitation services for deaf persons and shall have at least one deaf person so employed.

"§**§ 168-15 through 168-19:** Reserved for future codification purposes.

"Article 3.

"Family Care Homes.

"§ **168-20. Public policy.**

The General Assembly has declared in Article 1 of this Chapter that it is the public policy of this State to provide ~~handicapped~~ persons with disabilities with the opportunity to live in a normal residential environment.

"§ **168-21. Definitions.**

As used in this Article:

(1) "Family care home" means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident ~~handicapped persons.~~ persons with disabilities.

(2) ~~"Handicapped person"~~ "Person with disabilities" means a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

"§ **168-22. Family care home; zoning and other purposes.**

(a) A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts of all political subdivisions. No political subdivision may require that a family care home, its owner, or operator obtain, because of the use, a conditional use permit, special use permit, special exception or variance from any such zoning ordinance or plan; provided, however, that a political subdivision may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

(b) A family care home shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and

trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements.

"§ **168-23. Certain private agreements void.**

Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of such property as a family care home shall, to the extent of such prohibition, be void as against public policy and shall be given no legal or equitable force or effect."

SECTION 2. This act becomes effective September 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 12:50 p.m. on the 29th day of September, 2005.

H.B. 630 **Session Law 2005-451**

AN ACT TO REQUIRE MANUFACTURED HOME DEALERS TO ESTABLISH AND MAINTAIN ESCROW OR TRUST ACCOUNTS FOR BUYER DEPOSITS; TO CLARIFY THE CONTRACT NEGOTIATION PROCESS; AND TO CHANGE THE MEMBERSHIP OF THE NORTH CAROLINA MANUFACTURED HOUSING BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.8 through G.S. 143-143.25 of Article 9A of Chapter 143 of the General Statutes are redesignated as Part 1 of Article 9A of Chapter 143 of the General Statutes to be entitled "Part 1. Duties, Warranties, Purchase Transaction.". The Revisor of Statutes is authorized to make changes in the newly designated Part 1 that will reflect the results of the recodification.

SECTION 2. G.S. 143-143.9 reads as rewritten:

"§ **143-143.9. Definitions.**

The following definitions apply in this Article:

(1) ~~Board. – The North Carolina Manufactured Housing Board.~~Bank. – A federally insured financial institution including institutions defined under G.S. 53-1(1), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law.

(1a) Board. – The North Carolina Manufactured Housing Board.

(2) Buyer. – A person ~~who purchases at retail from a dealer or manufacturer~~ for whom a dealer performs, or is engaged to perform, any services or provides any products including the purchase and setup of a manufactured home for ~~personal~~ use as a residence or other related use.

(3) Code. – Engineering standards adopted by the Commissioner.

(4) Commissioner. – The Commissioner of Insurance of the State of North Carolina.

(5) Department. – The Department of Insurance of the State of North Carolina.

(5a) Deposit. – Any and all funds received by a dealer from a buyer or someone on behalf of a buyer for the performance of services or the provision of goods.

(5b) Escrow or trust account. – An account with a bank that is designated as an escrow account or as a trust account and that is maintained by a dealer for the deposit of buyers' funds.

(5c) Escrow or trust account funds. – Funds belonging to a person other than the dealer that are received by or placed under the control of the dealer in connection with the performance of services or the provision of products by a dealer for a buyer.

(5d) Funds. – Any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers. The term does not include letters of credit or promissory notes.

~~(5a)~~(5e) License. – A license issued under this Article.

~~(5b)~~(5f) Licensee. – A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.

(6) Manufactured home. – A structure, transportable in one or more sections, which, in the ~~travelling~~ traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) Manufactured home dealer or dealer. – Any person engaged in the business of buying or selling manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) Manufactured home manufacturer or manufacturer. – Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) Manufactured home salesperson or salesperson. – Any person employed by a manufactured home dealer to sell manufactured homes to buyers. Manufactured home salesperson or salesperson also includes sales managers, lot managers, general managers, or others who manage or supervise salespersons.

(10) Person. – Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) Responsible party. – A manufacturer, dealer, supplier, or set-up contractor.

(12) Setup. – The operations performed at the occupancy site which render a manufactured home fit for habitation.

(13) Set-up contractor. – A person who engages in the business of performing setups for compensation in North Carolina.

(14) Substantial defect. – Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) Supplier. – The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, ~~panelling,~~paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer."

SECTION 3. G.S. 143-143.10 reads as rewritten:

"§ **143-143.10. Manufactured Housing Board created; membership; terms; meetings.**

(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of ~~nine~~ 11 members as follows:

(1) The Commissioner of Insurance or ~~his~~ the Commissioner's designee.

(2) A manufactured home manufacturer.

(3) A manufactured home dealer.

(4) A representative of the banking and finance ~~business.~~industry.

(5) A representative of the insurance industry.

(6) A manufactured home supplier.

(7) A set-up contractor.

(8) Two representatives of the general public.

(9) A person who is employed with a HUD-approved housing counseling agency in the State.

(10) An accountant.

The Commissioner or ~~his~~ the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance ~~industry~~ industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home ~~supplier~~ supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate

appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The ~~member~~ members of the Board ~~representing the general public~~designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty-five percent (85%) of these funds shall be credited to the General Fund.

(b) In accordance with the provisions of this Article, the Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Article.

(4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.

(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

(6) To request that the Department of Justice conduct criminal history checks of applicants for licensure pursuant to G.S. 114-19.13.

(7) To conduct random audits of dealer escrow or trust accounts."

SECTION 4. G.S. 143-143.13(a) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Making a material misstatement in application for license.

(2) Failing to post an adequate corporate surety bond, cash bond or fixed value equivalent.

(3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board.

(4) Failing to comply with the warranty service obligations and claims procedure established by this Article.

(5) Failing to comply with the set-up requirements established by this Article.

(6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.

(6a) Failing to comply with the escrow or trust account provisions of Part 2 of this Article.

(7) Using unfair methods of competition or committing unfair or deceptive acts or practices.

(8) Failing to comply with any provision of this Article.

(9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper notice or failing to comply with orders of the Board issued pursuant to this Article.

(10) Employing unlicensed salespersons.

(11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.

(12) Conviction of any crime listed in G.S. 143-143.10A.

(13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article.

(14) Employing or contracting with any person to perform setups who is not licensed by the Board as a set-up contractor."

SECTION 5. G.S. 143-143.21A reads as rewritten:

"§ **143-143.21A. Purchase agreements; buyer cancellations.**

(a) A purchase agreement for a manufactured home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the purchase.

(2) The purchase price for the home and all accessories.

(3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.

(4) The date the retail purchase agreement is signed.

(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(b) The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT

I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT."

(c) At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer shall give the buyer a copy of the purchase agreement and a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the purchase agreement, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within ~~15~~ seven business days after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three day cancellation period. The dealer shall not commence setup procedures until after the final three day cancellation period has expired.

(e) If the buyer cancels the purchase after the three-day cancellation period, but before the sale is completed, and if:

(1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

~~(f) The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars ($2,000). To the extent practicable, the rules shall protect the deposits from the claims of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further provide for the prompt return of a buyer's deposit if the buyer is entitled to its return.~~"

SECTION 6. Article 9A of Chapter 143 of the General Statutes is amended by adding the following new Part to read:

"Part 2. Buyer Deposit, Escrow or Trust Accounts.

"**§ 143-143.50. Escrow or trust account required.**

(a) Dealers shall maintain buyers' deposits in an escrow or trust account with a bank. A dealer shall not commingle any other funds with buyers' deposits in the escrow or trust account.

(b) Dealers shall notify the Board in writing when the escrow or trust account is established. The notification shall include the name and number of the account and the name and location of the bank holding the account.

(c) All buyer funds shall be placed in the escrow or trust account no later than the close of the third banking business day after receipt.

(d) Dealers shall provide buyers with a receipt for all buyer deposits received by the dealer. The receipt shall include the amount of the buyer deposit, the date the deposit was provided to the dealer, and the name and address of the bank where the buyer's funds will be deposited.

"**§ 143-143.51. Use of escrow or trust funds; penalty for violations.**

(a) Buyer funds in the dealer's escrow or trust account shall be held for the benefit of the buyer and may only be used for purposes authorized under the contractual obligations of the dealer to the buyer. No buyer funds in the dealer's escrow or trust account may be used by the dealer until after all the terms set forth in G.S. 143-143.21A are finalized and after the three-day right of cancellation period as set forth in G.S. 143-143.21A has expired. The dealer may use buyer funds to complete the steps necessary for site preparation of property, when approved in writing in advance by the buyer. Buyer funds in the dealer's escrow or trust account shall be promptly returned to the buyers when the buyer is entitled to return of the funds in accordance with G.S. 143-143.21A.

(b) Notwithstanding any other provision of law and in addition to any other sanction the Board may impose under this Article, if the Board finds that a dealer has used a buyer's funds for a purpose that is not authorized under subsection (a) of this section or if the Board finds that a dealer has failed to place deposits in the dealer's escrow or trust account, the Board may fine the dealer or order restitution to the buyer in an amount up to the amount that the dealer misappropriated or failed to place in the account.

"**§ 143-143.52. Minimum requirements for dealer records for escrow or trust accounts at banks.**

The records required for escrow or trust accounts maintained at a bank shall consist of the following and be maintained for a period of five years from the date of purchase:

(1) All bank receipts or deposit slips listing the source and date of receipt of all funds deposited in the account and the name of the buyer to whom the funds belong.

(2) All cancelled checks or other instruments drawn on the account, or printed digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement.

(3) All instructions or authorizations to transfer, disburse, or withdraw funds from the escrow or trust account.

(4) All bank statements and other documents received from the bank with respect to the escrow or trust account, including notices of return or dishonor of any instrument drawn on the account against insufficient funds.

(5) A ledger containing a record of receipts and disbursements for each buyer from whom and for whom funds are received and showing the current balance of funds held in the escrow or trust account for each buyer.

"**§ 143-143.53. Accountings for escrow or trust funds.**

Upon the request of the buyer, the dealer shall provide to the buyer a written accounting of the receipts and disbursements of all escrow or trust funds upon the complete disbursement of the escrow or trust accounts.

"§ **143-143.54. Audits and record inspection.**

All financial records required by this Part shall be subject to audit for cause and to random audit at the discretion of and by the Board, the Commissioner, or the Attorney General. The Board may inspect these records periodically, without prior notice and may also inspect these records whenever the Board determines that the records are pertinent to an investigation of any complaint against a licensee. The dealer shall provide written authorization to the bank that holds the escrow or trust account to release any and all requested information relative to the account to the parties authorized under this section to inspect those records."

SECTION 7. Sections 1, 2, 3, and 5 of this act become effective April 1, 2006. The remainder of this act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 5:35 p.m. on the 29th day of September, 2005.

H.B. 1213 **Session Law 2005-452**

AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE OFFENSES UNDER CERTAIN CIRCUMSTANCES MAY HAVE THOSE CHARGES EXPUNGED IF THE CHARGES ARE SUBSEQUENTLY DISMISSED OR FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE ARE ENTERED AT THE SAME TERM OF COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-146 reads as rewritten:

"§ **15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.**

(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances

otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds that the person had not previously received an expungement under this subsection, that the person had not previously received an expungement under G.S. 15A-145 or G.S. 90-96, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging these records shall not be taxed against the petitioner.

(b1) Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank. A copy of the application for expungement of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the felony charges were brought not less than 20 days prior to the date of the hearing on the application. If the application for expungement is granted, a certified copy of the trial court's order dismissing the charges shall be attached to an order of expungement. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the SBI to send a letter documenting expungement as required by subsection (b2) of this section.

(b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this section, the SBI shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice

of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement."

SECTION 2. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 5:38 p.m. on the 29th day of September, 2005.

H.B. 768 **Session Law 2005-453**

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE UNIFORM BOILER AND PRESSURE VESSEL ACT OF NORTH CAROLINA AND THE WAGE AND HOUR ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-69.9 reads as rewritten:

"§ **95-69.9. Definitions.**

(a) The term "board" shall mean the North Carolina Board of Boiler and Pressure Vessel ~~Rules;~~Rules.

(b) The term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum ~~for use externally to itself~~ by the direct or indirect application of ~~heat from the combustion of fuels, or from electricity or nuclear energy. This~~ heat. The term "boiler" shall also include fired units for heating or vaporizing liquids other than water where these units ~~are separate from processing systems and~~ are complete within ~~themselves;~~themselves.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of ~~Labor;~~Labor.

~~(d) The term "Director" shall mean the individual appointed by the Commissioner to hold the office of Director of the Boiler and Pressure Vessel Division within the Department of Labor;~~

(e) The term "inspection certificate" or "certificate of inspection" shall mean certification by the ~~Director~~ Chief Inspector that a boiler or pressure vessel is in compliance with the rules and regulations adopted under this ~~Article;~~Article.

(f) The term "inspector's commission" shall mean a written authorization by the Commissioner for a person who has met the qualifications set out in this Article to conduct inspections of boilers and pressure ~~vessels;~~vessels.

(g) The term "pressure vessel" shall mean a vessel in which the pressure is obtained from an indirect source or by the application of heat from an indirect source or a direct source, other than those included within the term "boiler".

(h) The term "Chief Inspector" shall mean the individual appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within the Department of Labor. The Chief Inspector serves as the North Carolina member on the National Board of Boiler and Pressure Vessel Inspectors.

(i) The term "Deputy Inspector" shall mean any Boiler and Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the Chief Inspector.

(j) The term "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

(k) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision of the State or any unit of local government."

SECTION 2. G.S. 95-69.10 reads as rewritten:

"§ **95-69.10. Application of Article; exemptions.**

(a) This Article shall apply to all boilers and pressure vessels constructed, used, or designed for operation in this State including all new and existing installations which are operated in connection with business buildings, institutional buildings, industrial buildings, assembly buildings, educational buildings, public residential buildings, recreation buildings, other public buildings, and water supplies. This Article shall also apply to boilers and hot water supply tanks, and heaters located in hotels, motels, tourist courts, camps, cottages, resort lodges, and similar places whenever the owner or operator advertises in any manner for transit patronage, or solicits such business for temporary abode by transit patrons.

(b) This Article shall not apply to:

(1) Boilers and pressure vessels owned ~~and/or~~ or operated by the federal ~~government.~~government, unless the agency in question has asked for coverage by this Article.

(2) Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation.

(3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.

(4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.

(5) Pressure vessels used for transportation or storage of liquified petroleum gas.

(6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.

(7) Air tanks installed on right-of-way of railroads and used directly in the operation of trains.

(8) ~~Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure.~~Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:

a. Five cubic feet in volume and 250 psig.

b. Three cubic feet in volume and 350 psig.

c. One and one-half cubic feet in volume and 600 psig.

d. An inside diameter of six inches with no limitation on pressure.

(9) Pressure vessels operating at a working pressure not exceeding 15 ~~PSIG pressure.~~psig.

(10) Pressure vessels with a nominal water capacity ~~of~~ not exceeding 120 gallons ~~or less~~ and containing water under pressure at ~~ambient temperature,~~ temperatures not exceeding 120ºF, including those containing air, the compression of which serves as a cushion.

(11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.

(12) Repealed by Session Laws 1985, c. 620, s. 2.

(13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:

a. There is no drum, header, or other steam space.
b. No steam is generated within the coil.
c. Maximum 1 inch tube size.
d. Maximum 3/4 inch nominal pipe size.
e. Maximum 6 gallon nominal water storage capacity.
f. Water temperature of ~~350 degrees fahrenheit.~~350ºF.

(14) Pressure vessels containing water at a temperature not exceeding 110 degrees fahrenheit except that this provision shall not exclude hydropneumatic pressure vessels from regulation.

(15) An air tank that does not exceed eight cubic feet in volume that is installed on a service vehicle.

(16) Autoclaves in medical offices and hospitals that are less than five cubic feet in volume, even if they are equipped with a quick actuating closure.

(17) Coil-type hot water supply boilers of the instantaneous type where adequate safety relief valves and controls are installed if none of the following limitations are exceeded:

a. There is no drum, header, or other steam space.
b. No steam is generated within the coil.
c. Maximum one-inch tube size.
d. Maximum three-quarter-inch nominal pipe size.
e. Maximum six-gallon nominal water storage capacity.
f. Water temperature not to exceed 250ºF.
g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
h. Maximum pressure of 260 psig.

(18) Toy boilers, if all of the following apply:

a. The water containing volume of the boiler is less than one quart.
b. The operating pressure does not exceed 15 psig.
c. The maximum outside diameter of the shell is no greater than six inches.
d. The boiler is manually fired by solid fuels.

(19) Pressure vessels associated with electrical apparatus in electrical switchyards if the pressure vessels have proper pressure relief devices.

(20) Carbon dioxide tanks used in beverage dispensing service.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

(1) Heat input of 200,000 ~~BTU HR;~~Btu/hr or 58.6 kW.

~~(2) Water temperature of 200 degrees F;~~

(3) Nominal water capacity of 120 ~~gallons;~~gallons.

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(d) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1981, that:

(1) Are of one-piece, ~~forged construction and have no weldments;~~unwelded, forged construction;

(2) Are constructed before January 1, 1981, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Code;

(3) Are transferred into this State without a change of ownership; and

(4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(e) The construction requirements established by the Department of Labor shall not apply to pressure vessels installed in this State prior to December 31, 1984, that:

(1) Are manufactured from gray iron casting material, as specified by the American Society for Testing and Materials, (ASTM) 48-60T/30;

(2) Are constructed before December 31, 1967, and operating or could be operated, under the laws of any state or Canadian Province that has adopted one or more sections of the ASME Boiler and Pressure Vessel Code;

(3) Are transferred into this State without a change of ownership; and

(4) Are determined by the ~~Director~~ Chief Inspector to be constructed under standards substantially equivalent to those established by the department at the time of transfer;

provided that they are equipped with ASME Code and National Board certified safety relief valves.

(f) The construction requirements established by the Department of Labor shall not apply to hydropneumatic tanks installed or operated by a community water system prior to January 1, 1986."

SECTION 3. G.S. 95-69.11 reads as rewritten:

"§ **95-69.11. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) ~~To supervise the office of the Director of Boiler and Pressure Vessel Division.~~To delegate to the Chief Inspector any powers, duties, and

responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

(6) To enjoin violations of this Article in the civil and criminal courts of this State.

(7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.

(8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.

(9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.

(10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.

(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.

(12) To establish reasonable fees for the examination and certification of inspectors.

(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.

(14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.

(15) To order the payment of civil penalties provided by this section.

(16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article."

SECTION 4. G.S. 95-69.12 reads as rewritten:

"§ **95-69.12. ~~Office of Director of Boilers and Pressure Vessels Division created; powers and duties.~~Boiler Safety Bureau established.**

~~There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is~~

~~charged with the responsibility for the administration of this Article on a day-to-day basis.~~

~~The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses of the Division.~~

There is established a Boiler Safety Bureau within the Department of Labor. The Commissioner shall appoint a Chief Inspector of the Boiler Safety Bureau and any other employees that the Commissioner deems necessary to assist the Chief Inspector in administering the provisions of this Article and the rules adopted under this Article."

SECTION 5. G.S. 95-69.13 reads as rewritten:

"§ **95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties.**

(a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the ~~Commissioner, of which three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each.~~ Commissioner for a term of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of ~~a~~ boiler inspection and insurance ~~company~~ companies authorized to insure boilers and pressure vessels within the State, one a representative of the ~~operating steam engineers~~ antique boiler owners and operators in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall serve as ~~chairman.~~chair. The Chief Inspector shall serve on the Board and in the absence of the Commissioner shall serve as chair.

(b) The Board shall meet at least twice annually and shall be responsible for:

(1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the standards of the American Society of Mechanical ~~Engineers and amendments and interpretations thereto made and approved by the council of the Society.~~Engineers.

(2) Devise and ~~administer~~ proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a ~~certificate of competency as~~ commission as inspectors of boilers and pressure vessels in this State.

(2a) Act as proctors during the administration of the National Board commissioning examination.

(3) Issue, suspend, or revoke inspector's ~~commission to~~ commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established in accordance with Chapter 138 of the General Statutes."

SECTION 6. G.S. 95-69.14 reads as rewritten:

"§ **95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels.**

The Commissioner, after consultation with the Board, may adopt, ~~modify~~ modify, or revoke ~~such~~ any rules and regulations governing the construction, installation, repair, alteration, inspection, ~~use~~ use, and operation of boilers and pressure vessels as ~~he~~ the Commissioner deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the standards of the American Society of Mechanical Engineers and the amendments and interpretations ~~thereto, but to avoid unnecessary hardships that would result from requiring replacement of existing non-code tanks that meet minimum safety requirements where there is no danger to persons, such rules and regulations shall vary for hydropneumatic pressure vessels installed or operated by a community water system prior to January 1, 1986.~~of those engineering standards.

The procedure for the adoption, ~~modification~~ modification, or revocation of ~~such~~ the rules and regulations shall be ~~the same as that contained within~~ in accordance with ~~the Administrative Procedure Act of North Carolina as the same appears in~~ Chapter 150B of the General ~~Statutes.~~Statutes, the Administrative Procedure Act."

SECTION 7. G.S. 95-69.15 reads as rewritten:

"§ **95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission.**

(a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the ~~Director~~ Chief Inspector under this Article:

(1) Boiler and Pressure Vessel ~~Inspector.~~ Inspector or Deputy Inspector. – Shall be a qualified ~~individual~~ individual, employed by the Department of Labor and appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so ~~inspected;~~inspected.

(2) Special ~~Inspector.~~ Inspector or Insurance Inspector. – Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person ~~and/or~~ or property or both from explosions and accidents involving boilers and pressure ~~vessels;~~vessels. Special Inspectors shall not include employees of private contract inspection agencies.

(3) Owner-User Inspectors. – Shall be a qualified individual employed on a full-time basis by a company operating ~~boilers or~~ pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of ~~boilers and~~ pressure vessels owned or used by that company and where such inspection program is under

the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. – Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers ~~and/or~~ or pressure vessels or both for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a ~~certificate of competency.~~commission from the National Board.

A North Carolina commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the ~~Director.~~ Chief Inspector. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

A person seeking a commission from this State to conduct in-service inspections of boilers and pressure vessels must take and pass an examination on this Article and the rules adopted pursuant to this Article prior to receiving the commission. Any person who has had a commission in this State but who has been inactive for more than one year must take or retake and pass the State examination before conducting further in-service inspections of boilers and pressure vessels.

(c) ~~Qualifications for~~ Certificates of Competency. – Certificates of competency may be issued by the Chief Inspector to those persons who take and pass a National Board commissioning examination administered by the Board. ~~To be entitled to a certificate of competency, as one of the above type inspectors, an individual must:~~

~~(1) Have passed an examination provided and administered by the Board; or~~

~~(2) Have passed an examination and been certified in a state having rules and regulations substantially similar to those effective within North Carolina; or~~

~~(3) Hold a certificate of competency of the National Board of Boiler and Pressure Vessel Inspectors; and~~

~~(4) Continue in the employ of the company requesting the certificate of competency from the Board.~~"

SECTION 8. G.S. 95-69.16 reads as rewritten:

"§ **95-69.16. Inspection certificate required.**

All boilers and pressure vessels subject to the provisions of this Article shall be inspected by ~~an authorized~~ a commissioned inspector. The Commissioner may determine both the frequency and the method of inspection. In determining the frequency of inspection, the Commissioner shall give due consideration to the hazard involved and the need for the protection of the public. The method of inspection must provide an adequate procedure to insure the safety of individuals likely to be injured by an explosion or accident involving a boiler or pressure vessel.

No boiler or pressure vessel may be operated without an inspection certificate, except pressure vessels being operated under an owner-user provision where administrative procedures of equal safety and competency have been approved by the Board and Commissioner. No more than ~~60~~ 90 days grace period may be granted beyond the certificate expiration date."

SECTION 9. G.S. 95-69.17 reads as rewritten:

"§ **95-69.17. ~~Administrative and judicial review of decisions.~~Noncomplying devices; appeal.**

~~(a) A final decision to suspend or revoke an inspector's commission or inspection certificate shall be made in accordance with Chapter 150B of the General Statutes.~~

~~(b) A final decision to deny an application for a certificate of competency or to refuse to issue or renew an inspection certificate shall be made in accordance with Chapter 150B of the General Statutes. In a contested case under this subsection, the decision of the Director shall not be stayed pending administrative review.~~

~~(c) Article 4 of Chapter 150B of the General Statutes governs judicial review of a final decision in a contested case.~~

(a) If the Commissioner determines that a boiler or pressure vessel is subject to the provisions of this Article and that the operation of the boiler or pressure vessel is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the Commissioner may immediately order in writing that the use of the boiler or pressure vessel be stopped or limited until the Commissioner determines that the boiler or pressure vessel has been made safe for operation.

(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 10. G.S. 95-69.18 reads as rewritten:

"§ **95-69.18. ~~Inspection certificates required; misrepresentation as inspector.~~Operation without inspection certificate; operation not in compliance with this Article; operation after nonissuance or revocation of certificate.**

~~It shall be unlawful for any person, firm, partnership, association or corporation to operate or use any boiler or pressure vessel in this State, and to which this Article applies, without a valid inspection certificate issued by the North Carolina Department of Labor. Any person, firm, partnership, association or corporation found to be operating or using a boiler or pressure vessel without a valid inspection certificate shall be guilty of a Class 3 misdemeanor which may include a fine of one thousand dollars ($1,000).~~

~~Any person who knowingly and willfully misrepresents himself as an authorized inspector in North Carolina, shall be guilty of a Class 2 misdemeanor.~~

(a) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article without a valid inspection certificate unless the absence of a valid inspection certificate is the result of the Commissioner's failure to inspect the device.

(b) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article other than in accordance with this Article and the rules adopted pursuant to this Article.

(c) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vessel."

SECTION 11. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ **95-69.19. Violations; civil penalties; appeals.**

(a) Any person who violates G.S. 95-69-18(a) or (b) (operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each boiler or pressure vessel is so operated or used.

(b) Any person who violates G.S. 95-69-18(c) (operation after refusal to issue or after revocation of inspection certificate) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any such boiler or pressure vessel is so operated or used.

(c) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 12. Article 7A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ **95-69.20. Violations; criminal penalties.**

(a) Any person who knowingly and willfully misrepresents himself as an authorized inspector administering or enforcing the provisions of this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor.

(b) Any person knowingly making a material and false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article or the rules adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor."

SECTION 13. G.S. 95-107 reads as rewritten:

"§ **95-107. Assessment and collection of fees; certificates of safe operation.**

The assessment of the fees adopted by the Commissioner pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be made against the owner or operator of the equipment and may be collected at the time of inspection. If the fees are not collected at the time of inspection, the Department must bill the owner or operator of the equipment for the amount of the fee assessed for the inspection of the equipment and the amount assessed is payable by the owner or operator of the equipment upon receipt of the bill. Certificates of safe operation may be withheld by the Department of Labor until such time as the assessed fees are collected."

SECTION 14. G.S. 95-108 reads as rewritten:

"§ **95-108. Disposition of fees.**

All fees collected by the Department of Labor pursuant to ~~G.S. 95-110.5 and G.S. 95-111.4~~ G.S. 95-69.11, 95-110.5, and 95-111.4 shall be deposited with the State Treasurer and shall be used exclusively for inspection and certification purposes."

SECTION 15. G.S. 95-25.5(i) reads as rewritten:

"(i) ~~Youths~~ Youth under 18 years of age employed by their ~~parents~~ parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises."

SECTION 16. G.S. 95-25.8 reads as rewritten:

"§ **95-25.8. Withholding of wages.**

(a) An employer may withhold or divert any portion of an employee's wages when:

(1) The employer is required or empowered to do so by State or federal ~~law, or~~law;

(2) ~~The employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made indicating the reason for the deduction. Two types of authorization are permitted:~~

~~a.~~ When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. ~~authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided~~ Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the ~~authorization;~~authorization; or

(3)~~b.~~ When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the deduction. Prior to any deductions being made under this section, the employee must (i) receive advance written notice of the actual amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing.~~the authorization need not specify a dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made.~~

(b) The withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

(1) In nonovertime workweeks, an employer may reduce wages to the minimum wage level.

(2) In overtime workweeks, employers may reduce wages to the minimum wage level for nonovertime hours.

(3) No reductions may be made to overtime wages owed.

(c) In addition to complying with the requirements in subsections (a) and (b) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required.

(d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an employee as a result of a miscalculation or other bona fide error, advances of wages to an employee or to a third party at the employee's request, and the principal amount of loans made by an employer to an employee are considered prepayment of wages and may be withheld or deducted from an employee's wages. Deductions for interest and other charges related to loans by an employer to an employee shall require written authorization in accordance with subsection (a), above.

(e) Notwithstanding subsections (a) and (c), above, if criminal process has issued against an employee, an employee has been indicted, or an employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property, an employer may withhold or divert a portion of the employee's wages in order to recoup the amount of the cash shortage, inventory shortage, or damage to the employer's property, without the written authorization required by this section, but the amount of such withholdings shall comply with the provisions of subsection (b) of this section. If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.

(f) For purposes of this section, a written authorization or written notice may be in the form of an electronic record in compliance with Article 40 of Chapter 66 (the Uniform Electronic Transactions Act).

(g) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

SECTION 17. G.S. 95-25.9 is repealed.

SECTION 18. G.S. 95-25.10 is repealed.

SECTION 19. G.S. 95-25.11 reads as rewritten:

"§ **95-25.11. Employers' remedies preserved.**

~~(a) The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply if criminal process has issued against the employee, if the employee has been indicted, or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property.~~

~~If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.~~

~~(b)~~ Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

SECTION 20. G.S. 95-25.12 reads as rewritten:

"§ **95-25.12. Vacation ~~pay.~~pay plans.**

No employer is required to provide vacation pay plans for employees. However, if an employer provides ~~vacation~~ these promised benefits for employees, the employer shall give all vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture."

SECTION 21. G.S. 95-25.13(3) reads as rewritten:

"(3) Notify ~~its~~ employees, in writing or through a posted notice maintained in a place accessible to its employees, ~~of~~ at least 24 hours prior to any changes in promised ~~wages prior to the time of such changes except that wages~~ wages. Wages may be retroactively increased without the prior notice required by this subsection; and".

SECTION 22. G.S. 95-25.15(a) reads as rewritten:

"(a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or ~~his~~ the Commissioner's designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.~~establishment, and then shall investigate that specific complaint only.~~"

SECTION 23. G.S. 95-25.17 reads as rewritten:

"§ **95-25.17. Wage and Hour Division established.**

~~The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article.~~ The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article."

SECTION 24. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 5:40 p.m. on the 29th day of September, 2005.

H.B. 1095 **Session Law 2005-454**

AN ACT TO ESTABLISH UNIFORM CRITERIA FOR DRINKING WATER, WASTEWATER, AND STORMWATER LOANS AND GRANTS, TO CLARIFY AND REVISE THE PROCEDURES THAT APPLY TO THESE LOANS AND GRANTS TO REFLECT THE EXHAUSTION OF THE 1998 CLEAN WATER BOND PROCEEDS, AND TO PROVIDE FOR GREATER COORDINATION AMONG AGENCIES THAT MAKE LOANS AND GRANTS FOR WATER PROJECTS BY ESTABLISHING THE WATER INFRASTRUCTURE COMMISSION.

The General Assembly of North Carolina enacts:

PART I. WATER INFRASTRUCTURE

SECTION 1. The title of Chapter 159G of the General Statutes reads as rewritten:

"**Chapter 159G.**

"~~**North Carolina Clean Water Revolving Loan and Grant Act of 1987.**~~

Water Infrastructure."

SECTION 2. G.S. 159G-1 through G.S. 159G-18 is repealed.

SECTION 3. Chapter 159G of the General Statutes is amended by adding the following Articles to read:

"Article 1.

"General Provisions.

"§ **159G-20. Definitions.**

The following definitions apply in this Chapter:

(1) CWSRF. – The Clean Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(2) Construction costs. – The costs of planning, designing, and constructing a project for which a loan or grant is available under this Chapter. The term includes the following:

a. Excess or reserve capacity costs attributable to no more than 20-year projected domestic growth plus ten percent (10%) unspecified industrial growth.

b. Legal, fiscal, administrative, and contingency costs.

c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a project.

d. A fee payable to the Department for a permit to implement a project for which a loan or grant is obtained.

e. The cost to acquire real property or an interest in real property.

(3) Department. – The Department of Environment and Natural Resources.

(4) Division of Environmental Health. – The Division of Environmental Health of the Department of Environment and Natural Resources.

(5) Division of Water Quality. – The Division of Water Quality of the Department of Environment and Natural Resources.

(6) Drinking Water Reserve. – The Drinking Water Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(7) DWSRF. – The Drinking Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(8) Grant. – A sum of money given to an applicant without any obligation on the part of the applicant to repay the sum.

(9) High-unit-cost project. – A project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold. The average household user fee is calculated for a continuous 12-month period.

(10) High-unit-cost threshold. – Either of the following amounts determined on the basis of data from the most recent federal decennial census and updated by the U.S. Department of Housing and Urban Development's annual estimated income adjustment factors:

a. One and one-half percent (1.5%) of the median household income in an area that receives both water and sewer service.

b. Three-fourths of one percent (3/4%) of the median household income in an area that receives only water service or only sewer service.

(11) Loan. – A sum of money loaned to an applicant with an obligation on the part of the applicant to repay the sum.

(12) Local Government Commission. – The Local Government Commission of the Department of the State Treasurer, established in G.S. 159-3.

(13) Local government unit. – Any of the following:

a. A city as defined in G.S. 160A-1.

b. A county.

c. A consolidated city-county as defined in G.S. 160B-2.

d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes.

e. A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.

f. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.

h. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.

i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.

(14) Nonprofit water corporation. – A nonprofit corporation that is incorporated under Chapter 55A of the General Statutes solely for the purpose of providing drinking water or wastewater services and is an eligible applicant for a federal loan or grant from the Rural Utility Services Division, U.S. Department of Agriculture.

(15) Public water system. – Defined in G.S. 130A-313.

(16) Reserved.
(17) Reserved.
(18) Secretary. – The Secretary of Environment and Natural Resources.
(19) State. – The State of North Carolina.
(20) Stormwater quality project. – A project whose primary purpose is to prevent or remove pollution from stormwater rather than collect, store, or convey stormwater for drainage or flood control purposes.
(21) Targeted interest rate project. – Either of the following types of projects:
a. A high-unit-cost project that is awarded a loan.
b. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus.
(22) Treasurer. – The Treasurer of the State elected pursuant to Article III, Section 7, of the Constitution.
(23) Wastewater collection system. – A unified system of pipes, conduits, pumping stations, force mains, and appurtenances for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments, or any other buildings.
(24) Wastewater Reserve. – The Wastewater Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
(25) Wastewater system. – A wastewater collection system, wastewater treatment works, stormwater quality project, or nonpoint source pollution project.
(26) Wastewater treatment works. – The various facilities and devices used in the treatment of sewage, industrial waste, or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, nutrient removal equipment, pumping equipment, power and other equipment, and their appurtenances.
(27) Water Infrastructure Fund. – The fund established in G.S. 159G-22.

"**§ 159G-21. Revenue for water projects.**

This Chapter governs the use of the following revenue:

(1) Revenue appropriated to the Department to match federal funds received for loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of the federal funds.
(2) Revenue appropriated to the Department to provide a source of State funds to make loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of these funds.

"**§ 159G-22. Water Infrastructure Fund.**

(a) Fund Established. – The Water Infrastructure Fund is established as a special revenue fund. The Fund is comprised of the accounts set out in this section. The Fund provides revenue through its accounts for loans and grants as provided in this Chapter to meet the water infrastructure needs of the State. The Treasurer is responsible for distributing and investing all revenue received by the Fund. Interest and other investment income earned by the Fund accrues to it and must be allocated to the account to which the income is attributable. Accounts to which federal funds are credited must be kept separate from accounts that do not receive federal funds. A payment of the

principal of or interest on a loan made from an account of the Fund must be credited to the account from which the loan was made.

(b) CWSRF. – The Clean Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for wastewater projects and the State funds required to match the federal funds. The account is established under and must be managed in accordance with Title VI of the Federal Water Quality Act of 1987, Pub. L. 100-4, to achieve the purposes of that act and the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251 through 1387. The account must comply with these federal acts and the federal regulations adopted to implement the acts. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(c) DWSRF. – The Drinking Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for public water systems and the State funds required to match the federal funds. The account is established under and must be managed in accordance with section 130 of Title 1 of the federal Safe Drinking Water Act of 1996 as amended, 42 U.S.C. § 300J-12, to achieve the purposes of that act. The account must comply with that act and the federal regulations adopted to implement the act. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(d) Wastewater Reserve. – The Wastewater Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for wastewater systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(e) Wastewater Accounts. – The Department is directed to establish accounts within the Wastewater Reserve to administer loans and grants for wastewater collection systems, wastewater treatment works, stormwater quality projects, and nonpoint source pollution projects. The wastewater accounts must include an account for each type of loan or grant set out in G.S. 159G-33.

(f) Drinking Water Reserve. – The Drinking Water Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for public water systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(g) Drinking Water Accounts. – The Department is directed to establish accounts within the Drinking Water Reserve to administer loans and grants for public water systems. The drinking water accounts must include an account for each type of loan or grant set out in G.S. 159G-34.

"§ **159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of Environmental Health must each establish a system of assigning points to applications based on the following criteria:

(1) Public necessity. – An applicant must explain how the project promotes public health and protects the environment. A project that

improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system has priority.

(2) Effect on impaired waters. – A project that improves designated impaired waters of the State has priority.

(3) Efficiency. – A project that achieves efficiencies in meeting the State's water infrastructure needs by one of the following methods has priority:

a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.

b. Conservation or reuse of water.

(4) Comprehensive land-use plan. – A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes has priority over a project located in a city or county that has not adopted a plan or has not taken steps to do so. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum State standards for protection of water resources has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.

(5) Flood hazard ordinance. – A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A has priority over a project located in a city or county that has not adopted an ordinance. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has the same priority under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.

(6) Sound management. – A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management has priority.

(7) Capital improvement plan. – A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages has priority over a project that does not implement a

capital improvement plan. To receive priority, a capital improvement plan must set out the applicant's expected water infrastructure needs for at least 10 years.

(8) Coastal habitat protection. – A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8 has priority over other projects that affect counties subject to that Plan.

"§ **159G-24. Fee imposed on a loan or grant from Wastewater Reserve or Drinking Water Reserve.**

(a) Amount. – A loan awarded from the Wastewater Reserve or the Drinking Water Reserve is subject to a fee of two and one-half percent (2 1/2%) of the loan. A grant awarded from the Wastewater Reserve or the Drinking Water Reserve is subject to a fee of one and one-half percent (1 1/2%) of the grant. The fee is payable when a loan or grant is awarded.

(b) Departmental Receipt. – The fee on a loan from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt and must be applied to the Department's and the Local Government Commission's costs in administering loans from these Reserves. The Department and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt of the Department and must be applied to the Department's costs in administering grants from these Reserves.

"§ **159G-25. Expenditure for emergency corrective action at a wastewater treatment works.**

(a) The Department may use revenue in any account of the Wastewater Reserve to provide funds for emergency corrective action at a wastewater treatment works under the circumstances set out in this section. The amount expended in a fiscal year for corrective action under this section may not exceed two hundred thousand dollars ($200,000). An expenditure for emergency corrective action is authorized only under the following circumstances:

(1) A person holding a wastewater discharge or nondischarge permit issued under Article 21 of Chapter 143 of the General Statutes is violating the terms of the permit.

(2) The wastewater treatment works operated under the permit has a design flow capacity of no more than 100,000 gallons a day.

(3) The Department has given the permit holder written notice of the violation.

(4) The permit holder refuses to take the action required to comply with the permit.

(5) The inaction by the permit holder poses a threat to public health.

(6) The Department has informed the permit holder in writing that the Department plans to take emergency corrective action and then bring a civil action against the permit holder to recover the cost of the emergency corrective action.

(b) The Department may bring a civil action against the holder of the permit for the wastewater treatment works to recover the amount expended from the Wastewater Reserve for the emergency corrective action. The amount recovered in a civil action

must be credited to the account in the Wastewater Reserve from which the funds were expended.

"**§ 159G-26. Annual reports on Water Infrastructure Fund.**

(a) Requirement. – The Department must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Quality or the Division of Environmental Health. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly.

(b) Content. – The report required by this section must contain the following information concerning the accounts of the Water Infrastructure Fund:

(1) The beginning and ending balance of the account for the fiscal year.

(2) The amount of revenue credited to the account during the fiscal year, by source.

(3) The total amount of loans and grants awarded from the account, by type, and the amount of any expenditure for emergency corrective action made from the account.

(4) For each loan or grant awarded, the recipient of the award, the amount of the award, the amount of the award that was disbursed, and the amount of the award remaining to be disbursed in a subsequent fiscal year.

(5) The amount disbursed for loans and grants awarded but not disbursed in a prior fiscal year and the amount remaining to be disbursed in a subsequent fiscal year.

(6) An assessment of the expected impact on water quality and water supply of the projects for which the loans and grants were awarded.

"Article 2.

"Water Infrastructure Loans and Grants Administered by Department.

"**§ 159G-30. Department's responsibility.**

The Department, through the Division of Water Quality and the Division of Environmental Health, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of Environmental Health administers loans and grants from the DWSRF and the Drinking Water Reserve.

"**§ 159G-31. Entities eligible to apply for loan or grant.**

A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. Other entities are not eligible for a loan or grant from these accounts.

"**§ 159G-32. Projects eligible for loan or grant.**

(a) CWSRF and DWSRF. – Federal law determines whether a project is eligible for a loan or grant from the CWSRF and the DWSRF. A project must meet the eligibility requirements set under federal law.

(b) Wastewater Reserve. – The Department is authorized to make loans and grants from the Wastewater Reserve for the following types of projects:

(1) Wastewater collection system.

(2) Wastewater treatment works.

(3) Stormwater quality project.

(4) Nonpoint source pollution project.

(c) Drinking Water Reserve. – The Department is authorized to make loans and grants from the Drinking Water Reserve for public water system projects.

"**§ 159G-33. Loans and grants available from Wastewater Reserve.**

(a) Types. – The Department is authorized to make the types of loans and grants listed in this subsection from the Wastewater Reserve. Each type of loan or grant must be administered through a separate account within the Wastewater Reserve.

(1) General. – A loan or grant is available for a project authorized in G.S. 159G-32(b).

(2) High-unit-cost grant. – A high-unit-cost grant is available for the portion of the construction costs of a wastewater collection system project or a wastewater treatment works project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.

(3) Technical assistance grant. – A technical assistance grant is available to determine the best way to correct the deficiencies in a wastewater collection system or wastewater treatment works that either is not in compliance with its permit limits or, as identified in the most recent inspection report by the Department under G.S. 143-215.3, is experiencing operational problems and is at risk of violating its permit limits.

(4) Emergency loan. – An emergency loan is available in the event the Secretary certifies that a serious public health hazard related to the inadequacy of an existing wastewater collection system or wastewater treatment works is present or imminent in a community.

(b) Interaccount Transfer. – The Secretary may use revenue in any account in the Wastewater Reserve to provide funds for an emergency loan.

"**§ 159G-34. Loans and grants available from Drinking Water Reserve.**

(a) Types. – The Department is authorized to make the types of loans and grants listed in this section from the Drinking Water Reserve. Each type of loan or grant must be administered through a separate account within the Drinking Water Reserve.

(1) General. – A loan or grant is available for a project for a public water system.

(2) High-unit-cost grant. – A grant is available for the portion of the construction costs of a public water system project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.

(3) Technical assistance grant. – A technical assistance grant is available to determine the best way to correct the deficiencies in a public water system that does not comply with State law or the rules adopted to implement that law.

(4) Emergency loan. – An emergency loan is available to an applicant in the event the Secretary certifies that either a serious public health hazard or a drought emergency related to the water supply system is present or imminent in a community.

(b) Interaccount Transfer. – The Secretary may use revenue in any account in the Drinking Water Reserve to provide funds for an emergency loan.

"**§ 159G-35. Criteria for loans and grants.**

(a) CWSRF and DWSRF. – Federal law determines the criteria for awarding a loan or grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts must meet the criteria set under federal law. The Department is directed to establish through negotiation with the United States Environmental Protection Agency the criteria for evaluating applications for loans and grants from the CWSRF and the DWSRF and the priority assigned to the criteria. The Department must incorporate the negotiated criteria and priorities in the Capitalization Grant Operating Agreement between the Department and the United States Environmental Protection Agency. The criteria and priorities incorporated in the Agreement apply to a loan or grant from the CWSRF or the DWSRF. The common criteria in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

(b) Reserves. – The common criteria in G.S. 159G-23 apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Department may establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve.

"**§ 159G-36. Limits on loans and grants.**

(a) CWSRF and DWSRF. – Federal law governs loans and grants from the CWSRF and the DWSRF. An award of a loan or grant from one of these accounts must be consistent with federal law.

(b) Reserve Cost Limit. – The amount of a loan or grant from the Wastewater Reserve or the Drinking Water Reserve may not exceed the construction costs of a project. A loan or grant from one of these Reserves is available only to the extent that other funding sources are not reasonably available to the applicant.

(c) Reserve Recipient Limit. – The following limits apply to a loan or grant made from the Wastewater Reserve or the Drinking Water Reserve to the same local government unit or nonprofit water corporation:

(1) The amount of loans awarded for a fiscal year may not exceed three million dollars ($3,000,000).

(2) The amount of loans awarded for three consecutive fiscal years for targeted interest rate projects may not exceed three million dollars ($3,000,000).

(3) The amount of high-unit-cost grants awarded for three consecutive fiscal years may not exceed three million dollars ($3,000,000).

(4) The amount of technical assistance grants awarded for three consecutive fiscal years may not exceed fifty thousand dollars ($50,000).

"**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.**

An application for a loan or grant from the CWSRF or the Wastewater Reserve must be filed with the Division of Water Quality of the Department. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the Division of Environmental Health of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article.

"**§ 159G-38. Environmental assessment and public hearing.**

(a) Required Information. – An application submitted under this Article for a loan or grant for a project must state whether the project requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the application does not identify an exclusion in the North Carolina Environmental Policy Act, it must include an environmental assessment of the project's probable impacts on the environment.

(b) Division Review. – If, after reviewing an application, the Division of Water Quality or the Division of Environmental Health, as appropriate, determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division may not continue its review of the application until a final environmental impact statement has been completed and approved as provided in the North Carolina Environmental Policy Act.

(c) Hearing. – The Division of Water Quality or the Division of Environmental Health, as appropriate, may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application.

"**§ 159G-39. Review of applications and award of loan or grant.**

(a) Point Assignment. – The Division of Water Quality or the Division of Environmental Health, as appropriate, must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive.

(b) Initial Consideration. – The Division may consider an application for an emergency loan from the Wastewater Reserve or the Drinking Water Reserve at any time. The Division must consider all other loan applications and all grant applications filed during an application period at the same time in order to rank the applications.

(c) Reconsideration. – When an application's rank is too low to receive an award of a loan or grant for an application period, the Division must include the application with those considered for the next application period. If the application's rank is again too low to receive an award, the application is not eligible for consideration in a subsequent application period. An applicant whose application does not receive an award after review in two application periods may file a new application.

(d) Notification of Decision. – When the Division determines that an application's rank makes it eligible for an award of a loan or grant, the Division must send the applicant a letter of intent to award the loan or grant. The notice must set out

any conditions the applicant must meet to receive an award of a loan or grant. When the applicant satisfies the conditions set out in the letter of intent, the Division must send the applicant an offer to award a loan or grant. The applicant must give the Division written notice of whether it accepts or rejects the offer. A loan or grant is considered awarded when an offer to award the loan or grant is issued.

"**§ 159G-40. Terms of loan and execution of loan documents.**

(a) Approval by Local Government Commission. – The Department may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation in accordance with the factors set out in G.S. 159-153.

(b) Interest Rate and Maturity. – The interest rate payable on and the maximum maturity of a loan are subject to the following limitations:

(1) Interest rate. – The interest rate for a loan may not exceed the lesser of four percent (4%) or one half the prevailing national market rate for tax-exempt general obligation debt of similar maturities derived from a published indicator. When recommended by the Department, the Local Government Commission may set an interest rate for a loan for a targeted interest rate project at a rate that is lower than the standard rate to achieve the purpose of the target.

(2) Maturity. – The maximum maturity for a loan for a project that is not a high-unit-cost project may not exceed 20 years or the project's expected life, whichever is shorter. The maximum maturity for a loan for a high-unit-cost project is 30 years or the project's expected life, whichever is shorter.

(c) Security for Loan. – A local government unit may pledge any of the following, alone or in combination, as security for an obligation to repay the principal of and interest on a loan awarded under this Article:

(1) User fee revenues derived from operation of the wastewater system or public water system that benefits from the project for which the loan is awarded.

(2) A mortgage, deed of trust, security interest, or similar lien on part or all of the real and personal property comprising the wastewater system or public water system that benefits from the project for which the loan is awarded.

(3) Its full faith and credit if it meets the requirements of Article 4 of Chapter 159 of the General Statutes.

(4) Nontax revenue not included in subdivision (1) of this subsection.

(d) Debt Instrument. – A local government unit and a nonprofit water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government units and nonprofit water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding.

"§ **159G-41. Withdrawal of loan or grant.**

A letter of intent to offer an award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within two years after the date of the letter, unless the Department finds that the applicant has good cause for the failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award, unless the Department finds that the applicant has good cause for the failure. If the Department finds good cause for an applicant's failure, the Department must set a date by which the applicant must take action or forfeit the loan or grant.

"§ **159G-42. Disbursement of loan or grant.**

The Department must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the Department and document the expenditures for which the payment is requested.

"§ **159G-43. Inspection of project.**

(a) Authority. – The Department may inspect a project for which it awards a loan or grant under this Article to determine the progress made on the project and whether the construction of the project is consistent with the project described in the loan or grant application. The inspection may be performed by personnel of the Department or by a professional engineer licensed under Chapter 89C of the General Statutes.

(b) Disqualification. – An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

(1) Is an officer or employee of the local government unit or nonprofit water corporation that received the loan or grant award for the project.

(2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made.

"§ **159G-44. Rules.**

The Department may adopt rules to implement this Chapter. Chapter 150B of the General Statutes, the Administrative Procedure Act, governs the adoption of rules by the Department. A rule adopted to administer a loan or grant from the CWSRF or the DWSRF must be consistent with federal law. The Department must give a copy of the rules adopted to implement this Article without charge to a person who requests a copy.

"Article 3. Reserved.

"Article 4.

"State Water Infrastructure Commission.

"§ **159G-65. State Water Infrastructure Commission.**

(a) Purpose. – The State Water Infrastructure Commission is established in the Office of the Governor. The purpose of the Commission is to identify the State's water infrastructure needs, develop a plan to meet those needs, and monitor the implementation of the plan.

(b) Membership. – The Commission consists of 13 members as follows:

(1) The Secretary of Commerce or a Department of Commerce employee designated by the Secretary who is familiar with the State programs that fund water or other infrastructure improvements for the purpose of promoting economic development.

(2) The Secretary of Environment and Natural Resources or a Department of Environment and Natural Resources employee designated by the

Secretary who is familiar with the water infrastructure financing, regulatory, and technical assistance programs of the Department.

(3) The President of the Rural Economic Development Center or a Rural Center employee designated by the President who is familiar with the water infrastructure financing programs of the Rural Center.

(4) The Executive Director of the Clean Water Management Trust Fund or a Trust Fund employee designated by the Executive Director who is familiar with wastewater, drinking water, and stormwater issues.

(5) The Director of the Local Government Commission or an employee of the State Treasurer's Office designated by the Director who is familiar with the functions of the Commission.

(6) The Executive Director of the League of Municipalities or a League employee designated by the Executive Director who is familiar with the League's programs.

(7) The Executive Director of the North Carolina Association of County Commissioners or an Association employee designated by the Executive Director who is familiar with the Association's programs.

(8) One member appointed by the Chancellor of North Carolina State University.

(9) An engineer appointed by the American Council of Engineering Companies.

(10) One member appointed by the Water Resources and Research Institute.

(11) One member appointed by the Governor who is a representative of a local government wastewater system or public water system.

(12) One member appointed by the President Pro Tempore of the Senate.

(13) One member appointed by the Speaker of the House of Representatives.

(c) Terms. – The members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives serve two-year terms. The other members, who are ex officio members or designees of those members, serve until they are no longer in office or are replaced with another designee. Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(d) Chair. – The Governor appoints the initial chair of the Commission. The chair appointed by the Governor must call the first meeting, at which the members must elect a chair. The Chair serves a term of one year. The Commission must elect a chair annually.

(e) Meetings. – The Commission must meet at least four times a year and may meet as often as needed. A majority of the members of the Commission constitutes a quorum for the transaction of business. The affirmative vote of a majority of the members present at a meeting of the Commission is required for action to be taken by the Commission.

(f) Vacancies. – A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made. The term of an appointment to fill a vacancy is for the balance of the unexpired term.

(g) Compensation. – The Commission members receive no salary or other monetary compensation for serving on the Commission.

"§ **159G-66. Duties of the Commission.**

The Commission has the following duties:

(1) To assess and make recommendations on the role of the State in the development and funding of wastewater, drinking water, and stormwater infrastructure in the State.

(2) To analyze the adequacy of projected funding to meet projected needs over the next five years.

(3) To propose State priorities for funding.

(4) To make recommendations on ways to maximize the use of current funding resources, whether federal, State, or local, and to ensure that funds are used in a coordinated manner.

(5) To review the application of management practices in wastewater, drinking water, and stormwater utilities and determine the best practices.

(6) To assess the role of public-private partnerships in the future provision of utility service.

(7) To assess the application of the river basin approach to utility planning and management.

(8) To assess the need for a "troubled system" protocol.

"§ **159G-67. Commission reports.**

The Commission must publish an annual report by 1 November of each year on its activity and findings. The Commission must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly. The report must include any recommendations of the Commission that require action by the General Assembly to implement."

PART II. CLEAN WATER MANAGEMENT TRUST FUND

SECTION 4. G.S. 113A-252 of the General Statutes reads as rewritten:

"§ **113A-252. Definitions.**

~~As used~~ The following definitions apply in this Article:

(1) Council. – The advisory council for the Clean Water Management Trust Fund.

(2) Economically ~~Distressed Units of Local Government. – Counties designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A and any cities located in those counties.~~ distressed local government unit. – An economically distressed county, as defined in G.S. 105-129.3, or a local government unit located in that county.

(3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.

(4) Land. – Real property and any interest in, easement in, or restriction on real property.

(4a) Local government unit. – Defined in G.S. 159G-20.

(4b) Stormwater quality project. – Defined in G.S. 159G-20.

(5) Trustees. – The trustees of the Clean Water Management Trust Fund.

(6) Wastewater collection system. – Defined in G.S. 159G-20.

(7) Wastewater treatment works. – Defined in G.S. 159G-20."

SECTION 5. G.S. 113A-253 reads as rewritten:

"§ **113A-253. Clean Water Management Trust ~~Fund: established.~~ Fund.**

(a) Fund Established. – ~~There is established a Clean Water Management Trust Fund in the State Treasurer's Office that shall be used to finance projects to clean up or prevent surface water pollution in accordance with this Article.~~ The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

(1) Annual appropriations under G.S. 143-15.3B.

(2) Scenic River special registration plates under G.S. 20-81.12.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. – Moneys from the Fund are appropriated annually ~~and~~ to finance projects to clean up or prevent surface water pollution in accordance with this Article. Revenue in the Fund may be used for any of the following purposes:

(1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and urban drinking water supplies and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(5) To repair failing ~~waste treatment systems~~ wastewater collection systems and wastewater treatment works if ~~(i) an application has first been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and the application was denied during the latest review cycle; (ii)~~ the repair is a reasonable remedy for resolving an existing waste treatment ~~problem; and (iii)~~ problem and the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community. ~~Priority shall be given to economically distressed units of local government.~~

(6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand ~~waste treatment systems if the system is being expanded as a remedy to eliminate~~ a wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections. ~~Priority shall be given to economically distressed units of local government.~~

(7) To ~~improve stormwater controls and management practices.~~ finance stormwater quality projects.

(8) To facilitate planning that targets reductions in surface water pollution.

(9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than two percent (2%) of the annual balance of the Fund on 1 July ~~1~~ or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff."

SECTION 6. G.S. 113A-254 reads as rewritten:

"§ **113A-254. ~~Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement.~~ Grant requirements.**

(a) Eligible ~~Grant~~ Applicants. – Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

(1) A State agency.

(2) A local government ~~or other political subdivision of the State or a combination of such entities.~~ unit.

(3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(a1) Criteria. – The criteria developed by the Trustees under G.S. 113A-256 apply to grants made under this Article. The common criteria for water projects set in G.S. 159G-23 and the criteria set out in this section also apply to wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects. The common criteria set in G.S. 159G-23 have priority over the criteria set under this Article for wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects. An application for a wastewater collection system project or a wastewater treatment works project that serves an economically distressed local government unit has priority.

(b) ~~Grant~~ Matching Requirement. – The Board of Trustees shall establish matching requirements for grants awarded under this Article. The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) ~~Grants Not Available to Satisfy Compensatory Mitigation Requirements.~~ Restriction. – No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(d) Wastewater Limits. – A wastewater collection system project or a wastewater treatment works project is eligible for a grant under this Article only if it is a high-unit-cost project, as defined in G.S. 159G-20. A grant made under this Article for a wastewater collection system project or a wastewater treatment works project is subject to the cost limits and recipient limits set in G.S. 159G-36 for a grant awarded from the Wastewater Reserve.

(e) Stormwater Limits. – The amount of a grant awarded under this Article for a stormwater quality project may not exceed the construction costs of the project. The total amount of grants awarded under this Article to the same recipient for stormwater

quality projects for a fiscal year may not exceed the limit set in G.S. 159G-36(c)(1) for grants to the same recipient from the Wastewater Reserve.

(f) Withdrawal. – An award of a grant under this Article is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant."

PART III. CONFORMING CHANGES

SECTION 7. G.S. 143-215.3A(a)(3) is repealed.

SECTION 8. G.S. 143-215.3B is repealed. Funds in the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund are transferred to the Wastewater Reserve of the Water Infrastructure Fund established in G.S. 159G-22.

SECTION 9. Part 30 of Article 7 of Chapter 143B of the General Statutes is repealed.

SECTION 10. G.S. 159-153(a1) reads as rewritten:

"(a1) ~~Commission Approval Required for Nonprofit Water Corporation Loans From the Clean Water Revolving Loan and Trust Fund. — In addition to the requirements of Chapter 159G of the General Statutes, approval by the Commission in accordance with this section is required before a nonprofit water corporation may be eligible to receive a revolving loan or grant under Chapter 159G of the General Statutes.~~ Nonprofit Water Corporation. – A loan from the Water Infrastructure Fund to a nonprofit water corporation, as defined in G.S. 159G-20, is subject to approval by the Commission under this section."

PART IV. EFFECTIVE DATE

SECTION 11. The first reports required by G.S. 159G-26 and G.S. 159G-67, as enacted by Section 3 of this act, shall be published on or before 1 November 2006.

SECTION 12. This act becomes effective 1 January 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 5:41 p.m. on the 29th day of September, 2005.

S.B. 1126 **Session Law 2005-455**

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO EXEMPT FROM COASTAL RECREATIONAL FISHING LICENSE REQUIREMENTS ONLY THOSE INDIVIDUALS WHO ARE UNDER SIXTEEN YEARS OF AGE OR WHO HOLD CERTAIN LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION THAT WERE PURCHASED PRIOR TO JANUARY 1, 2006, TO PROVIDE FOR A STATEWIDE SUBSISTENCE FISHING LICENSE WAIVER, TO PROHIBIT THE WILDLIFE RESOURCES COMMISSION FROM DISCLOSING PERSONAL IDENTIFYING INFORMATION OF LICENSEES AND OTHERS UNDER CERTAIN CIRCUMSTANCES, TO AMEND VARIOUS STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION, TO

PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AUTHORIZE THE MARINE FISHERIES COMMISSION AND THE WILDLIFE RESOURCES COMMISSION TO JOINTLY DISBURSE FISHING LICENSE REVENUES AND INVESTMENT INCOME TO MANAGE THE MARINE RESOURCES OF THE STATE.

The General Assembly of North Carolina enacts:

PART I. AMEND FISHING LICENSE REQUIREMENTS

SECTION 1.1. The title of Article 14B of Chapter 113 of the General Statutes reads as rewritten:

"Article 14B.

~~Saltwater~~ Coastal Recreational Fishing Licenses."

SECTION 1.2. G.S. 113-174 reads as rewritten:

"§ **113-174. Definitions.**

As used in this Article:

~~(1)~~ ~~"Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish that are not to be sold. "Recreational fishing" does not include the taking of finfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5)~~ ~~"SFL" means Saltwater Fishing License.~~"

SECTION 1.3. G.S. 113-174.1 reads as rewritten:

"§ **113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License ~~Purchase~~ Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that

authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) Compliance With Applicable Laws. – It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) Fourth of July Free Fishing Day. – The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 or an Ocean Fishing Pier Blanket CRFL issued under G.S. 113-174.4 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission or the Division may issue a new license to replace one issued by the respective agency that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission or the Division setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 1.4. G.S. 113-174.2 reads as rewritten:

"§ **113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of~~

~~Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age $100.00~~

~~b. Six years of age to younger than 11 years of age $150.00~~

~~c. 11 years of age to younger than 18 years of age $200.00~~

~~d. 18 years of age or older $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 65 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $15.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2006:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).
c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).
d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).
e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).
f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).
g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).
h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:
a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).
b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 1.5. Article 14B of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-174.3. For Hire Blanket CRFL.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.
(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers.

(b) Implementation. – Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat.

"**§ 113-174.4. Ocean Fishing Pier Blanket CRFL.**

Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing from the pier may purchase an Ocean Fishing Pier Blanket CRFL issued by the Division. An Ocean Fishing Pier Blanket CRFL authorizes all individuals who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters while on the pier. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket

CRFL is four dollars ($4.00) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier."

SECTION 1.6. G.S. 113-270.1C reads as rewritten:

"§ **113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 1.7. G.S. 113-270.1D reads as rewritten:

"§ **113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age ~~70~~ 65 Resident Lifetime Sportsman License – ~~$10.00.~~$15.00. This license shall be issued only to an individual resident of the State who is at least ~~70~~ 65 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 1.8. G.S. 113-271 reads as rewritten:

"§ **113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 65 Resident Lifetime Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State who is at least 65 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by

the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 1.9. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 1.10. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 1.11. G.S. 113-276(e) is repealed.

SECTION 1.12. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural-bait exemption in subsection (e) above.~~"

SECTION 1.13. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing ~~still~~ apply."

SECTION 1.14. G.S. 113-276 is amended by adding a new subsection to read:

"(n) The Wildlife Resources Commission may adopt rules to exempt individuals who participate in organized fishing events held in inland or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

SECTION 1.15. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 1.16. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish

with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivision f. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 65 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $30.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and

who is totally and permanently disabled as determined by the Social Security Administration.

(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

b. Resident Legally Blind Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver. – A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, Food Stamps, or Work First Family Assistance through the county department of social services and who requests a waiver. This waiver shall be issued at no charge. This waiver is valid for a period of one year from the date of issuance. This waiver shall be issued only to an individual who is a resident of the State. This waiver authorizes the waiver holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. County departments of social services shall supply the Wildlife Resources Commission with the name, mailing address, and telephone number of each individual who receives a waiver."

SECTION 1.17. Article 24 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ **143-254.5. Disclosure of personal identifying information.**

(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.

(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.

(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.

(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number."

SECTION 1.18. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 1.19. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective January 1, ~~2006.~~2007. All other sections of this act become effective when the act becomes law."

SECTION 1.20. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 1.21. G.S. 113-130(4) is amended by adding a new sub-subdivision to read:

"f. Students. – Nonresident students attending a university, college, or community college in the State."

PART II. MARINE RESOURCES FUND AND MARINE RESOURCES ENDOWMENT FUND

SECTION 2.1. The title of Article 14C of Chapter 113 of the General Statutes reads as rewritten:

"Article 14C.

~~North Carolina Saltwater Fishing~~Marine Resources Fund and Marine Resources Endowment Fund."

SECTION 2.2. G.S. 113-175 reads as rewritten:

"§ **113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the

Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 2.3. G.S. 113-175.1 reads as rewritten:

"§ **113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and ~~G.S. 147-69.3.~~ G.S. 147-69.3, and all marine resources investment income shall be deposited to the credit of the Marine Resources Fund. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of both the Marine Fisheries Commission and the Wildlife Resources Commission.

(c) The Marine Fisheries Commission and the Wildlife Resources Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Marine Fisheries Commission and the Wildlife Resources Commission may not authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income to establish positions without specific authorization from the General Assembly. All proposals to the Marine Fisheries Commission and the Wildlife Resources Commission for the disbursement of funds from the Marine Resources Fund shall be made by and through the Fisheries Director. Expenditure of the assets of the Marine Resources Fund shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Marine Resources Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

SECTION 2.4. G.S. 113-175.2 is repealed.

SECTION 2.5. G.S. 113-175.3 is repealed.

SECTION 2.6. G.S. 113-175.4 is repealed.

SECTION 2.7. Article 14C of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Proceeds of any gifts, grants, or contributions to the Marine Fisheries Commission or the Division of Marine Fisheries that are not specifically designated for another purpose.

(4) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(5) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(6) Transfers to the Endowment Fund.

(7) Any endowment investment income or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of both the Marine Fisheries Commission and the Wildlife Resources Commission.

(c) Subject to the limitations set out in subsection (d) of this section, the Marine Fisheries Commission and the Wildlife Resources Commission may authorize the

disbursement of endowment investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The Marine Fisheries Commission and the Wildlife Resources Commission may not authorize the disbursement of endowment investment income to establish positions without specific authorization from the General Assembly. All proposals to the Marine Fisheries Commission and the Wildlife Resources Commission for the disbursement of funds from the Endowment Fund shall be made by and through the Fisheries Director.

(d) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following limitations are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"§ **113-175.6. Report.**

The Chair of the Marine Fisheries Commission and the Chair of the Wildlife Resources Commission shall jointly submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 2.8. The first report required pursuant to G.S. 113-175.7, as enacted by Section 2.7 of this act, is due by October 1, 2006.

SECTION 2.9. G.S. 113-174.2(d), as enacted by Section 1.4 of this act, provides that the holders of certain lifetime licenses purchased prior to January 1, 2006, are exempt from the license requirement for engaging in recreational fishing in coastal

fishing waters. The General Assembly finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million four hundred thousand dollars ($3,400,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred eighty thousand dollars ($680,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 2.10.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement this act.

SECTION 2.10.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

PART III. WILDLIFE RESOURCES COMMISSION LICENSE AGENTS

SECTION 3.1.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 3.1.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 3.2. G.S. 113-270.1 reads as rewritten:

"§ **113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources

Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 3.3. G.S. 150B-1(e) is amended by adding a new subdivision to read:

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

…

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

PART IV. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

SECTION 4.1. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 4.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 4.3. Sections 1.13, 1.14, 1.17, 1.18, 1.19, 1.20, 4.1, 4.2, and 4.3 of this act are effective when this act becomes law. Section 2.10 of this act becomes

effective July 1, 2005. Sections 1.9, 1.10, 1.15, 1.21, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, and 2.9 of this act become effective January 1, 2006. Section 3.3 of this act becomes effective January 1, 2006, and applies to determinations made on or after that date. Sections 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.11, 1.12, and 1.16 of this act become effective January 1, 2007. Section 3.1 of this act is effective when this act becomes law and expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 become effective. The Chair of the Wildlife Resources Commission shall notify the Revisor of Statutes when all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective. Section 3.2 of this act becomes effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 5:51 p.m. on the 29th day of September, 2005.

S.B. 612 **Session Law 2005-456**

AN ACT TO AMEND THE LOBBYING LAWS BY INCREASING THE INFORMATION REQUIRED TO BE REPORTED ON LOBBYING ACTIVITIES WITHOUT LIMITING EXPENDITURES; BY REQUIRING MONTHLY REPORTING OF LEGISLATIVE LOBBYING DURING SESSIONS OF THE GENERAL ASSEMBLY AND QUARTERLY THEREAFTER; BY ESTABLISHING A WAITING PERIOD BEFORE CERTAIN STATE OFFICERS MAY LOBBY; BY BARRING LOBBYISTS FROM CERTAIN APPOINTMENTS AND OTHER ACTIVITIES; BY REQUIRING REGISTRATION AND QUARTERLY REPORTING OF LOBBYING ACTIVITIES OF EXECUTIVE BRANCH OFFICERS; AND BY CREATING A NO GIFTS REGISTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9A of Chapter 120 of the General Statutes reads as rewritten:

"Article 9A.

"Legislative Branch Lobbying.

"§ **120-47.1. Definitions.**

~~For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:~~The following definitions shall apply in this Article:

(1) The term "covered person" means a legislator, the Governor, or the Lieutenant Governor.

~~(1)~~(1a) The ~~terms "contribution," "compensation" and~~ term "expenditure" ~~mean~~ means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or ~~anything~~ thing of value greater than ten dollars ($10.00), ~~and any~~or ~~contracta~~ contract, agreement, promise or other obligation whether or not legally enforceable, ~~but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.~~that directly or indirectly

is made to, at the request of, for the benefit of, or on the behalf of a covered person, legislative employee, or that person's immediate family member.

(1b) The term "executive lobbyist" means a lobbyist registered pursuant to Article 4C of Chapter 147 of the General Statutes.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1.

(3a) The term "immediate family member" means spouse, descendant, or ascendant.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other ~~matter~~ matter, whether or not the matter is identified by an official title, general title, or other specific reference, by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(4a) The term "legislative employee" means employees and officers of the General Assembly.

(4b) The term "legislative liaison personnel" means any State ~~officer or employee~~officer whose principal ~~duties~~ duties, in practice or as set forth in that person's job ~~description~~ description, ~~involve~~ include lobbying the General Assembly.

(4c) The term "legislative lobbyist" means any lobbyist for or against legislative action.

(4d) The term "legislator" means a member of the General Assembly or a person elected or appointed a member of the General Assembly prior to taking office.

(5) The term "lobbying" ~~means:~~means any of the following:

a. Influencing or attempting to influence legislative action through direct ~~oral or written~~ communication or activities with a ~~member of the General Assembly; or~~covered person, legislative employee, or that person's immediate family member.

b. Solicitation of others by legislative lobbyists or lobbyists' principals to influence legislative action.

c. Developing goodwill through communications or activities, including the building of relationships, with a covered person, legislative employee, or that person's immediate family with the intention of influencing current or future legislative action, but does not include communications or activities with a covered person, legislative employee, or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to legislative action.

(6) The term "lobbyist" means an individual ~~who:~~who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of ~~lobbying; or~~lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

c. Is legislative liaison personnel.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the ~~entity in~~person on whose behalf the legislative lobbyist ~~influences or attempts to influence legislative action.~~lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for legislative lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(7a) The term "news medium" means mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of ~~persons.~~persons which has an independent legal existence.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

"§ **120-47.2. Registration procedure.**

(a) A legislative lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement ~~is required~~ for each ~~lobbyist's principal.~~ principal the lobbyist represents. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, ~~and~~ complete ~~address;~~address and telephone number; the registrant's place of business; the full ~~name and~~name, complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a legislative lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each legislative lobbyist shall ~~register again~~file an amended registration form with the Secretary of State no later than 10 days after any change in the information

supplied in ~~his~~ the legislative lobbyist's last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. Within 20 days after the beginning of the term of a Governor, the Secretary of State shall furnish the Governor, each other member of the Council of State, the head of each principal department of the Executive Branch, and the State Legislative Library a list of all persons who have registered as executive or legislative lobbyists and whom they represent. A supplemental list of legislative lobbyists shall be furnished periodically each 20 days thereafter as the session progresses. A supplemental list of executive lobbyists shall be furnished periodically each 60 days thereafter. For each special session of the General Assembly, a supplemental list of legislative lobbyists shall be furnished to the State Legislative Library. All lists required by this section may be furnished electronically.

(e) Each registration statement of a legislative lobbyist required under this Article shall be effective from the date of filing until January 1 of the following ~~odd-numbered~~ year. The legislative lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

"§ **120-47.3. Registration fee.**

~~Every lobbyist's principal shall pay to the Secretary of State a fee of two hundred dollars ($200.00)~~ A fee of one hundred dollars ($100.00) ~~that~~ is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each registration. ~~A separate registration, together with a separate registration fee two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a lobbyist.~~ Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"§ **120-47.4. ~~Written authority~~ Authorization from lobbyist's ~~principal to be filed.~~principal; fee from principal.**

(a) Each legislative lobbyist or principal shall file with the Secretary of State within 10 days after ~~his~~ the legislative lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal. ~~to act as such, signed by the lobbyist's principal.~~

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the principal's full name, complete address and telephone number, name and title of the official signing for the principal, and the name of each lobbyist registered to represent the principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's

first authorization statement is filed each calendar year for a legislative lobbyist. The fee for the legislative lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by an executive lobbyist is filed at the same time. No additional fee is due for additional authorizations filed for legislative lobbyists.

(e) The fee in subsection (d) of this section shall be reduced to a total of twenty-five dollars ($25.00) if the principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists."

"§ **120-47.5. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as a legislative lobbyist for compensation that is dependent upon the result or outcome of any legislative action. ~~which is dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with any action of the General Assembly, the House, the Senate or any committee thereof.~~

(b) No ~~person~~ legislative lobbyist or legislative lobbyist's principal shall attempt to influence the action of any ~~member of the General Assembly~~ covered person by the promise of financial support of the ~~member's~~covered person's candidacy, or by threat of financial ~~contribution~~ support in opposition to the ~~member's~~ covered person's candidacy in any future election.

"**§ 120-47.5A. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 120-47.6 and G.S. 120-47.7, the following expenditures need not be reported:

(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, or members of the household of the covered person or legislative employee.

(2) Lawful campaign contributions.

(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.

(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(b) For purposes of G.S. 120-47.6 and G.S. 120-47.7, all expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Expenditures benefiting or made on behalf of a covered person, a legislative employee, or those persons' immediate family members, in the regular course of that person's nonlegislative employment.

(2) Contractual arrangements or direct business relationships between a legislative lobbyist or legislative lobbyist's principal and a covered

person, legislative employee, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to a legislative lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

(c) For reporting purposes of G.S. 120-47.6 and G.S. 120-47.7, legislative lobbying with respect to only the legislative actions of the Governor and Lieutenant Governor shall be reported.

"§ **120-47.6. Statements of legislative lobbyist's lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist shall file ~~an expense report with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's principal, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The legislative lobbyist shall file ~~both~~ expense reports whether or not expenditures are made.

(b) Each ~~expense~~ expenditure report shall set forth the ~~date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.~~ fair market value, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, legislative employee, or that person's immediate family member benefiting from the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Other expenditures.

In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a legislative lobbyist fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the legislative lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the legislative lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an ~~expense~~ expenditure report in one of the manners prescribed ~~herein~~ in this section shall result in revocation of any and all registrations of a legislative lobbyist under this Article. No legislative lobbyist may register or reregister under this Article until ~~he~~ the legislative lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a legislative lobbyist for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the lobbyist with required notifications of the initial violation. This provision shall not apply to a failure by the lobbyist to file an expenditure report in a timely manner.

"§ **120-47.7. Statements of legislative lobbyist's principal lobbying ~~expenses~~ expenditures required.**

(a) Each legislative lobbyist's principal shall file ~~an expense report with the Secretary of State within 60 days after the last day of the regular session. This expense report shall include all expenditures made between January 1 and the last day of the regular session. The 'principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year.~~ monthly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, while the General Assembly is in regular session, and quarterly thereafter. The expenditure report shall include all expenditures during the reporting period and shall be due 10 business days after the end of the reporting period. The

lobbyist's principal shall file ~~both expense~~ the expenditure reports whether or not expenditures are made during a reporting period.

(b) Each ~~expense~~ expenditure report shall set forth the ~~name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.~~ Fair market value, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any covered person, legislative employee, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

In addition, expenses for the solicitation of others to lobby, whether or not a covered person, legislative employee, or family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.

In addition, the compensation paid or agreed to be paid to all legislative lobbyists shall be reported, whether or not a covered person, legislative employee, or family member is affected. If a legislative lobbyist is a full-time employee of the lobbyist's principal, or is compensated by means of an annual fee or retainer, the lobbyist's principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying. The lobbyist's principal's expenditure report shall include an itemized description of all expenditures reimbursed or paid to legislative lobbyists for lobbying that are not reported on the legislative lobbyists' reports.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public ~~inspection.~~inspection upon filing. When more than 15 covered persons benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of covered persons benefiting and, with particularity, the basis for their selection, including the name of the legislative body, committee,

caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of legislative employees and immediate family members of covered persons and legislative employees who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file ~~a lobbying expense~~an expenditure report as required ~~herein,~~in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expenditure report in one of the manners prescribed in this section shall result in revocation of any and all registrations of a lobbyist's principal under this Article. No lobbyist's principal may register or reregister under this Article until the lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 120-47.7B. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 120-47.7C. Prohibitions.**

(a) No member or former member of the General Assembly may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this

Article or Article 4C of Chapter 147 of the General Statutes within six months after the end of that member's service in the General Assembly.

(b) No person serving as Governor, as a member of the Council of State, or as a head of a principal State department listed in G.S. 143B-6 may be employed as an executive or legislative lobbyist by a lobbyist's principal to lobby as defined in this Article or Article 4C of Chapter 147 of the General Statutes within six months after separation from employment or leaving office.

(c) No individual registered as a legislative lobbyist shall serve as a campaign treasurer under Chapter 163 of the General Statutes for a campaign for election as a member of the General Assembly.

(d) A legislative or executive lobbyist shall not be eligible for appointment by a State official to any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 60 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(e) No legislative or executive lobbyist or another acting on the lobbyist's behalf shall permit a covered person, legislative employee, executive branch officer, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the expenditure.

"§ **120-47.8. Persons exempted from provisions of Article.**

~~The~~ Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An ~~individual, not acting as a lobbyist,~~ individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative matters to ~~his own legislative delegation or other~~ members of the General ~~Assembly.~~Assembly and not acting as a legislative lobbyist.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a legislative ~~lobbyist in connection with that or any other legislative matter.~~lobbyist.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to ~~his~~ the office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of ~~State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.~~State.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to ~~legislators~~ covered

persons on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not ~~otherwise, directly or indirectly,~~ otherwise connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1.

(7) ~~Members of the General Assembly.~~Covered persons and legislative employees.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a legislative lobbyist in connection with that or any other legislative matter.

(9) ~~An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.~~An employee who represents the employer's interests in legislative action for no more than three hours in a quarter, provided that neither the employee nor the employer makes any expenditure as defined in G.S. 120-47.1.

"§ **120-47.8A. Expenditures made by persons exempted or not covered by this Article.**

(a) If a covered person or a legislative employee accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the covered person or legislative employee accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the covered person or legislative employee accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If a covered person or a legislative employee accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the covered person or legislative employee accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the covered person's, legislative employee's, or that person's immediate family member's nonlegislative employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"§ **120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no legislative lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a legislative or executive lobbyist for a period of two years following ~~his~~ conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"§ **120-47.10. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon ~~complaint made to him of violations of this Article,~~ complaint, make an appropriate investigation thereof, and ~~he~~ the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"§ **120-47.11. Rules and forms.**

(a) The Secretary of State shall ~~make, amend, and rescind~~adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

"§ **120-47.12. Limitations on agency legislative ~~liaisons.~~liaison personnel.**

(a) No ~~principal~~ State department may use State funds to contract with persons who are not employed by the State to lobby the General Assembly.

(b) No more than two persons in each ~~principal~~ State department and constituent institution of The University of North Carolina may be registered to lobby the General Assembly or designated as legislative ~~liaisons~~ liaison personnel pursuant to this Article.

(c) All persons designated as legislative liaison personnel pursuant to this Article and the State department or constituent institution of The University of North Carolina that employs the legislative liaison personnel shall report all expenditures made for lobbying purposes in the same manner as required for legislative lobbyists under G.S. 120-47.6 and lobbyists' principals under G.S. 120-47.7. The registration and

authorization fees required under G.S. 120-47.3 and G.S. 120-47.4 shall not apply to legislative liaison personnel or the State department or constituent institution that employs the legislative liaison personnel."

SECTION 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 4C.

"Executive Branch Lobbying.

"**§ 147-54.31. Definitions.**

The following definitions shall apply in this Article:

(1) The term "executive action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, adoption, tabling, postponement, defeat, or rejection of a rule, regulation, executive order, resolution, or other quasi-legislative action by the executive branch or by a member or employee of the executive branch acting or purporting to act in an official capacity. This term shall not include any action by an attorney representing a client with respect to the executive action.

(2) The term "executive branch officers" means the Governor, any member of the Council of State, the heads of those departments listed in G.S. 143B-6, and members of the Board of Governors of The University of North Carolina.

(3) The term "executive lobbyist" means any lobbyist for or against executive action.

(4) The term "expenditure" means any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00), or a contract, agreement, promise, or other obligation whether or not legally enforceable, that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of an executive branch officer or that person's immediate family member.

(5) The term "immediate family member" means spouse, descendant, or ascendant.

(6) The term "lobbying" means any of the following:

a. Influencing or attempting to influence executive action through direct communication or activities with an executive branch officer.

b. Solicitation of others by an executive lobbyist or lobbyist's principal to influence executive action through direct communication or activities with an executive branch officer.

c. Developing executive goodwill through communications or activities, including the building of relationships, with an executive branch officer or that person's immediate family with the intention of influencing current or future executive action, but does not include communications or activities with executive branch officers or that person's immediate family member in a business, civic, religious, fraternal, or commercial relationship which is not connected to executive action.

(7) The term "lobbyist" means an individual who meets any of the following criteria:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying.

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 147-54.40. For the purpose of determining whether an individual is an executive lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involves executive lobbying.

(8) The terms "lobbyist's principal" and "principal" mean the person on whose behalf the executive lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for executive lobbying, the principal is the person whose interests the lobbyist represents in lobbying.

(8a) The term "news medium" means mainstream media providers whose sole purpose is to report events and that does not involve research or advocacy.

(9) The term "person" means any individual, firm, partnership, committee, association, corporation, business entity, or any other organization or group of persons which has an independent legal existence.

"§ **147-54.32. Registration procedure.**

(a) An executive lobbyist shall file a registration statement with the Secretary of State in a manner prescribed by the Secretary before engaging in any lobbying. It shall be unlawful for a person to lobby without registering unless exempted by this Article. A lobbyist shall file a separate registration statement for each principal the lobbyist represents. The registration shall indicate whether it is registration as a legislative lobbyist, executive lobbyist, or both, and a separate registration fee shall be paid for each separate type of registration.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address and telephone number; the registrant's place of business; the full name and complete address and telephone number of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as an executive lobbyist. The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and lobbyists' principals in an electronic, searchable format.

(c) Each executive lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the executive lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of an executive lobbyist required under this Article shall be effective from the date of filing until January 1 of the following year. The executive lobbyist shall file a new registration statement after that date.

"§ **147-54.33. Registration fee.**

A fee of one hundred dollars ($100.00) is due and payable to the Secretary of State by either the lobbyist or the lobbyist's principal at the time of each registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically, but may not require the fees to be paid electronically. The Secretary of State shall adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship. The Secretary of State shall also adopt rules providing for the waiver or reduction of the fees required by this section in cases of hardship.

"**§ 147-54.34. Authorization from lobbyist's principal; fee from principal.**

(a) Each executive lobbyist or principal shall file with the Secretary of State within 10 days after the executive lobbyist's registration a written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the principal's full name, complete address and telephone number, name and title of the official signing for the principal, and the name of each lobbyist registered to represent the principal. The Secretary of State shall make available as soon as practicable the authorization of the lobbyists' principals in an electronic, searchable format.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 days after any change in the information supplied on the previous authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

(d) Except as provided for in subsection (e) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for an executive lobbyist. The fee for the executive lobbyist's authorization shall be seventy-five dollars ($75.00) if an authorization for the principal to be represented by a legislative lobbyist is filed at the same time. No additional fee is due for additional authorizations filed for executive lobbyists.

(e) The fee in subsection (d) of this section shall be reduced to a total of twenty-five dollars ($25.00) if the principal had annual revenues in its most recent fiscal year of three hundred thousand dollars ($300,000) or less and is represented by no more than two different lobbyists. This reduced fee covers authorizations filed for the principal's legislative and executive lobbyists.

"**§ 147-54.35. Contingency lobbying fees and election influence prohibited.**

(a) No person shall act as an executive lobbyist for compensation that is dependent upon the result or outcome of any executive action.

(b) No executive lobbyist or executive lobbyist's principal shall attempt to influence the action of an executive branch officer by the promise of financial support of the executive branch officer's candidacy or appointment, or by threat of financial support in opposition to the executive branch officer's candidacy in any future election or future reappointment.

"**§ 147-54.36. Exemptions and inclusions for reporting purposes.**

(a) For purposes of G.S. 147-54.37 and G.S. 147-54.38, the following expenditures need not be reported:

(a) For purposes of G.S. 147-54.37 and G.S. 147-54.38, the following expenditures need not be reported:

(1) Gifts between an immediate family member or person who is the stepchild, sibling, mother-in-law, father-in-law, son-in-law,

daughter-in-law, or members of the household of the executive branch officer.

(2) Lawful campaign contributions.

(3) Commercially available loans made on terms not more favorable than generally available to the public in the normal course of business if not made for the purpose of lobbying.

(4) Contractual arrangements or business relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

(5) The cost of attendance or participation provided by the sponsoring entity of lodging, and of food and beverages consumed, at events sponsored by or in conjunction with a civic, charitable, community, or diplomatic event if the activity or event does not last longer than three hours.

(6) Academic scholarships made on terms not more favorable than scholarships generally available to the public.

(b) For purposes of G.S. 147-54.37 and G.S. 147-54.38, all expenditures made for the purpose of lobbying need to be reported, including:

(1) Expenditures benefiting or made on behalf of an executive branch officer or that person's immediate family members, in the regular course of that person's nonexecutive employment.

(2) Contractual arrangements or direct business relationships between an executive lobbyist or executive lobbyist's principal and an executive branch officer or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Expenditures reimbursed to an executive lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

(c) For reporting purposes of G.S. 147-54.37 and G.S. 147-54.38, executive lobbying with respect to only the executive actions of the Governor and Lieutenant Governor shall be reported.

"**§ 147-54.37. Statements of executive lobbyist's lobbying expenditures required.**

(a) Each executive lobbyist shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, with respect to each lobbyist's principal within 10 business days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The executive lobbyist shall file an expenditure report whether or not expenditures are made.

(b) Each expenditure report shall set forth the fair market value, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any executive branch officer, or that person's immediate family member benefiting by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.

(2) Entertainment, food, and beverages.

(3) Meetings and events.

(4) Gifts.

(5) Other expenditures.

In addition, expenses for the solicitation of others to lobby, whether or not an executive branch officer or that person's immediate family member is affected, shall be

reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported, provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When an executive lobbyist fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the executive lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the executive lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist under this Article. No executive lobbyist may register or reregister under this Article until the executive lobbyist has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 147-54.38. Statements of lobbyist's principal lobbying expenses required.**

(a) Each executive lobbyist's principal shall file quarterly expenditure reports under oath with the Secretary of State, in a manner prescribed by the Secretary of State, which may include electronic reports, within 10 business days after the end of the reporting period. The expenditure report shall include all expenditures during the reporting period. The lobbyist's principal shall file an expenditure report whether or not expenditures are made during a reporting period.

(b) Each expenditure report shall set forth the fair market value, date, a description of the expenditure, name and address of the payee, or beneficiary, and name of any executive branch officers, or that person's immediate family member affected by the expenditure. Such expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment, food, and beverages.
(3) Meetings and events.
(4) Gifts.
(5) Other expenditures.

In addition, expenses for the solicitation of others to lobby, whether or not an executive branch officer or that person's immediate family member is affected, shall be reportable if such expenses are incurred in connection, or in concert, with other expenditures reportable under this subsection.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection upon filing. When more than 15 executive branch officers benefit from an expenditure, no names of individuals need be reported provided that the report identifies the approximate number of executive branch officers benefiting and, with particularity, the basis for their selection. The approximate number of immediate family members who benefited from the expenditure shall be listed separately.

(d) When a lobbyist's principal fails to file an expenditure report as required in this section, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

(e) Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of an executive lobbyist's principal under this Article. No executive lobbyist's principal may register or reregister under this Article until the executive lobbyist's principal has fully complied with this section.

(f) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary of State may adopt rules to facilitate complete and timely disclosure of expenditures, including the format of reports and additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a principal for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide to the principal with required notifications of the initial violation. This provision shall not apply to a failure by the principal to file an expenditure report in a timely manner.

"**§ 147-54.39. Powers and duties of the Secretary of State.**

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 147-54.37 and G.S. 147-54.38 on a regular basis to assure complete and timely disclosure of expenditures.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Article, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"**§ 147-54.40. Persons exempted from provisions of Article.**

Except as otherwise provided in this Article, the provisions of this Article shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion on an executive action and not acting as an executive lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more executive branch officers at the invitation or request of the collective body or a member thereof and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and its public duties.

(4) A person performing professional services in advising and rendering opinions to clients, or to executive branch officers on behalf of clients, as to the construction and effect of proposed or pending executive action where the professional services are not otherwise connected with executive action.

(5) A person who owns, publishes, or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) A person responding to inquiries from an executive branch officer and who engages in no further activities as an executive lobbyist in connection with that or any other executive action.

(7) A person appearing before an executive branch agency or department on behalf of another person, on an individual application for a license or permit, or a disciplinary action on a license or permit.

(8) A person appearing before an executive branch officer on behalf of another person with respect to a proposed sale or lease of real property, goods or services to the State, or construction of property by the State.

(9) An employee who represents the employer's interests in executive action for no more than nine hours during a six-month reporting period, provided that neither the employee nor the employer make any expenditure as defined in G.S. 147-54.31.

(10) A person appearing before an executive branch agency or department or an executive branch officer on behalf of another person or entity in connection with an application for a grant, loan, determination or eligibility, or certification.

"**§ 147-54.41. Expenditures made by persons exempted or not covered by this Article.**

(a) If an executive branch officer accepts an expenditure made for the purpose of lobbying valued over two hundred dollars ($200.00) from a person or group of persons acting together, exempted or not otherwise covered by this Article, the person, or group of persons, making the expenditure shall report the date, a description of the expenditure, the name and address of the person, or group of persons, making the expenditure, the name of the executive branch officer accepting the expenditure, and the estimated fair market value of the expenditure.

(b) If the person making the expenditure in subsection (a) of this section is outside North Carolina, and the executive branch officer accepting the expenditure is also outside North Carolina at the time the person accepts the expenditure, then the person accepting the expenditure shall be responsible for filing the report using available information.

(c) If an executive branch officer accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not otherwise covered by this Article, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the executive branch officer accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the covered person or legislative employee accepting the scholarship shall be responsible for filing the report.

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions.

(2) Any gift from a family member to a covered person or legislative employee.

(3) Gifts associated primarily with the executive branch officer's or that person's immediate family member's nonexecutive employment.

(4) Gifts, other than food, beverages, travel, and lodging, received by an executive branch officer which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(6) Gifts accepted by an executive branch officer in the name of or on behalf of the State.

(f) Reports required by this section shall be filed within 10 business days after the end of the quarter in which the expenditure was made, with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports.

"**§ 147-54.42. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no executive lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as an executive or legislative lobbyist for a period of two years following conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for willful false or incomplete reporting up to five thousand dollars ($5,000) per violation.

"**§ 147-54.43. Enforcement of Article by Attorney General.**

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60, of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article.

"**§ 147-54.44. Rules and forms.**

(a) The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Article. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) The Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project.

SECTION 3. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ **147-54.8. No gifts registry.**

(a) The Secretary of State shall establish a 'No Gifts' registry for persons subject to Article 9A of Chapter 120 of the General Statutes or Article 4C of this Chapter. The 'No Gifts' registry shall be published and updated with the list of lobbyists and lobbyists' principals required under G.S. 120-47.2.

(b) Except as provided in this subsection, executive lobbyists, legislative lobbyists, and lobbyists' principals shall not give gifts to persons placing their names on the registry. Gifts of informational directories may be given to persons placing their names on the registry.

(c) The Secretary shall have the authority to adopt rules to implement this section in compliance with the following criteria:

(1) The registration is valid from the time the person registers until January 1 of the following year, unless the person requests in writing the removal of that person's name.

(2) The registration shall be in writing.

(d) For purposes of this section, the term "gift" means any payment, entertainment, advance, services, forgiveness of an obligation or debt, or thing of value, unless consideration of equal or greater value has been given therefor."

SECTION 4. The Secretary of State shall implement electronic filing of all lobbyists' and lobbyists' principals' reports required under Article 9A of Chapter 120 of the General Statutes and provide public access via the Internet to all these filings as soon as practicable.

SECTION 5. Sections 4 and 5 of this act become effective July 1, 2005. G.S. 120-47.7C(d), as enacted by Section 1 of this act, shall apply to appointments made on or after January 1, 2007. The remainder of this act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 1:35 p.m. on the 30th day of September, 2005.

H.B. 855 **Session Law 2005-457**

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO ESTABLISH STATEWIDE NUTRITION STANDARDS FOR SCHOOL MEALS, A LA CARTE FOODS AND BEVERAGES, AND THE AFTER SCHOOL SNACK PROGRAM ADMINISTERED BY THE DEPARTMENT OF PUBLIC INSTRUCTION AND CHILD NUTRITION PROGRAMS OF LOCAL SCHOOL ADMINISTRATIVE UNITS, AS RECOMMENDED BY THE STUDY COMMITTEE FOR CHILDHOOD OVERWEIGHT/OBESITY OF THE HEALTH AND WELLNESS TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 17 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"§ **115C-264.3. Child Nutrition Program standards.**

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2007-2008 school year, followed by middle schools and then high schools."

SECTION 2. The State Board of Education may use "Eat Smart: North Carolina's Recommended Standards for All Foods Available in School" and the "United States Dietary Guidelines" as references for establishing the nutrition standards under Section 1 of this act. In addition to the elementary school pilots established by Section 7.17 of S.L. 2004-124, the nutrition standards will also be piloted prior to statewide implementation in a minimum of eight middle schools and eight high schools at a time to be determined by the State Board of Education. The pilots shall be conducted in a manner that will hold the child nutrition program of a participating local school administrative unit financially harmless for its participation in the pilot project. It shall be the responsibility of the Child Nutrition Services Section of the Department of Public Instruction to oversee the pilot project, collect data from the pilots, interpret the data, and develop written guidance based on the outcomes of the pilots. The Child Nutrition Services Section of the Department of Public Instruction shall modify the nutrition standards as needed based on several criteria, including, but not limited to, the results of the pilot projects, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages. The Child Nutrition Services Section of the Department of Public Instruction shall monitor the progress of each local school administrative unit toward achieving the nutrition standards and shall provide technical assistance and training as needed to assist local school administrative units in implementing the nutrition standards. The Child Nutrition Services Section of the Department of Public Instruction shall report annually on the progress of each local school administrative unit to the State Board of Education and to the Joint Legislative Education Oversight Committee.

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 1:41 p.m. on the 1st day of October, 2005.

H.B. 911 **Session Law 2005-458**

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE STATE BOARD OF EDUCATION DEVELOP A HIGH SCHOOL EXIT EXAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12(9a) and G.S. 115C-12(9b) are repealed.

SECTION 2. G.S. 115C-12 is amended by adding a new subdivision to read:

"(9c) Power to develop content standards and exit standards. – The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. The high school course content standards also shall be aligned with the minimum undergraduate course requirements for admission to the constituent institutions of The University of North Carolina. The Board may develop exit standards that will be required for high school graduation.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work

in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the State Board's priorities."

SECTION 3. G.S. 115C-174.11 reads as rewritten:

"§ **115C-174.11. Components of the testing program.**

…

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. The State Board may develop and implement a plan for high school end-of-course tests that must be aligned with the content standards developed under G.S. 115C-12(9c). Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section. ~~Notwithstanding subsection (a) of this section, the State Board shall develop and implement a study allowing selected local school administrative units that volunteer to administer a standardized test in May, 12 months prior to the third grade end-of-grade test, in order to establish a baseline that will be used to measure academic growth at the end of third grade. Initially, the State Board shall select 12 volunteer local school administrative units that are diverse in geography and size to participate in the study. If the State Board determines that a standardized test administered in May, 12 months prior to the third grade end-of-grade test, is more reliable than a standardized test administered at the beginning of third grade for the purpose of measuring academic growth, the State Board may change the test date for additional local school units. The State Board shall report the results of the study to the Joint Legislative Education Oversight Committee by October 15, 2000.~~

~~Baseline measurements administered in May, 12 months prior to the third grade end-of-grade test, are not public records as provided in Chapter 132 of the General Statutes.~~

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 12:12 p.m. on the 2nd day of October, 2005.

S.B. 665 **Session Law 2005-459**

AN ACT TO AUTHORIZE PUBLIC HEALTH AUTHORITIES TO CONTRACT DIRECTLY WITH PRIVATE VENDORS TO OPERATE THE COUNTY BILLING SYSTEM FOR MEDICAID CLAIMS AND TO AUTHORIZE PUBLIC HEALTH AUTHORITIES TO INCREASE THEIR MEMBERSHIP.

Whereas, the county share of the nonfederal share of Medicaid costs has a significant impact on county resources and cash flow; and

Whereas, more timely reimbursement of county Medicaid claims would improve county cash flow; and

Whereas, the current process for Medicaid billing is more complicated than necessary; and

Whereas, contracting with a private vendor to interface directly with the State Medicaid billing system would make the billing process for county Medicaid claims much simpler than it now is; and

Whereas, county public health authorities would benefit from private vendor-operated Medicaid billing by enabling the authorities to optimize revenue through efficiencies that are currently not in place through the State billing system; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Part 1B of Article 2 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"§ **130A-45.13. Authority to contract directly with private providers to operate billing system for county Medicaid claims.**

A public health authority board may contract directly with private vendors to operate the authority's Medicaid billing system as an alternative to the State-operated health services information system. The contract may provide for the private vendor to bill directly the State Medicaid billing system (MMIS), thereby bypassing the State health services information system (HSIS). The public health authority shall issue a "request for proposal" to solicit private vendor bids for contracts authorized under this section. Information systems authorized under this section shall be consistent with and interface with relevant statewide public health data systems to address State cost containment and service reporting needs."

SECTION 2. G.S. 130A-45.1 reads as rewritten:

"§ **130A-45.1. Membership of the public health authority board.**

(a) A public health authority board shall be the policy-making, rule-making, and adjudicatory body for a public health authority and shall be composed of no fewer than seven members and no more than nine members; except that in an authority comprising two or more counties, the board shall be composed of no more than 11 members. Boards which intend to pursue federally qualified health center (or look-alike) status may have no fewer than nine and no more than 25 members.

(b) In a single county authority, the county board of commissioners shall appoint the members of the board; in an authority comprising two or more counties, the chair of the county board of commissioners of each county in the authority shall appoint one county commissioner, or the commissioner's express designee, to the authority board and these members shall jointly appoint the other members of the board.

(c) The members of the board shall include:

(1) At least one physician licensed under Chapter 90 of the General Statutes to practice medicine in this State, and at least one dentist licensed under Article 2 of Chapter 90 of the General Statutes to practice dentistry in this State;

(2) At least one county commissioner or the commissioner's express designee from each county in the authority;

(3) At least two licensed or registered professionals from any of the following professions: optometry, veterinary science, nursing, pharmacy, engineering, or accounting;

(4) At least one member from the administrative staff of a hospital serving the authority service area; and

(5) At least one member from the general public.

(d) Except as provided in this subsection, members of the board shall serve terms of three years. ~~Two of the original members shall serve terms of one year, and two of the original members shall serve terms of two years.~~ In order to establish a uniform staggered term structure for the Board, a member may be appointed for less than a three-year term."

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to county Medicaid claims arising on or after that date.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

Became law upon approval of the Governor at 12:15 p.m. on the 2nd day of October, 2005.

H.B. 217 **Session Law 2005-460**

AN ACT TO MAKE IT UNLAWFUL TO DRIVE AWAY FROM OR OTHERWISE LEAVE THE SCENE OF A MOTOR VEHICLE ACCIDENT IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-166 reads as rewritten:

"§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

(a) The driver of any vehicle who knows or reasonably should know:

(1) That the vehicle which he or she is operating is involved in an accident or collision; and

(2) That the accident or collision has resulted in injury or death to any person;

shall immediately stop his or her vehicle at the scene of the accident or collision. ~~He~~ The driver shall remain with the vehicle at the scene of the accident until a law-enforcement officer completes ~~his~~ the investigation of the accident or collision or authorizes ~~him~~ the driver to ~~leave;~~ leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set

forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. ~~Provided, however, that he may leave to call for a law enforcement officer or for medical assistance or medical treatment as set forth in (b), but~~ If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of ~~time.~~ time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as a Class H felony.

(b) In addition to complying with the requirement of ~~(a),~~subsection (a) of this section, the driver as set forth in subsection (a) shall give his or her name, address, driver's license number and the license plate number of ~~his~~ the vehicle to the person struck or the driver or occupants of any vehicle collided with, provided that ~~such~~ the person or persons are physically and mentally capable of receiving such information, and shall render to any person injured in such accident or collision reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person. A violation of this subsection is a Class 1 misdemeanor.

(c) The driver of any vehicle, when he or she knows or reasonably should know that the vehicle which he or she is operating is involved in an accident or collision, which accident or collision, results:

(1) Only in damage to property; or

(2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop ~~his~~ the vehicle at the scene of the accident or collision. If the accident is a reportable accident, the driver shall remain with the vehicle at the scene of the accident until a law enforcement officer completes the investigation of the accident or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.

(c1) In addition to complying with the requirement of ~~(c),~~subsection (c) of this section, the driver as set forth in subsection (c) shall give his or her name, address, driver's license number and the license plate number of his vehicle to the driver or occupants of any other vehicle involved in the accident or collision or to any person whose property is damaged in the accident or collision. If the damaged property is a parked and unattended vehicle and the name and location of the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the ~~said~~ driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided ~~he~~ the driver thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing ~~said~~ the information in a conspicuous place upon or in the damaged vehicle. If the damaged property is a guardrail, utility pole, or other fixed object owned by the Department of Transportation, a public utility, or other public service corporation to which report cannot readily be made at the scene, it shall be sufficient if the responsible driver shall

furnish the information required to the nearest peace officer or make written report thereof containing ~~said~~ the information by U.S. certified mail, return receipt requested, to the North Carolina Division of Motor Vehicles within five days following ~~said~~ the collision. A violation of this subsection is a Class 1 misdemeanor.

(c2) ~~If~~ Notwithstanding subsections (a) and (c) of this section, if an accident or collision occurs on a main lane, ramp, shoulder, median, or adjacent area of a highway, each vehicle shall be moved as soon as possible out of the travel lane and onto the shoulder or to a designated accident investigation site to complete the requirements of this section and minimize interference with traffic if all of the following apply:

(1) The accident or collision has not resulted in injury or death to any person or the drivers did not know or have reason to know of any injury or death.

(2) Each vehicle can be normally and safely driven. For purposes of this subsection, a vehicle can be normally and safely driven if it does not require towing and can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway.

(d) Any person who renders first aid or emergency assistance at the scene of a motor vehicle accident on any street or highway to any person injured as a result of ~~such~~ the accident, shall not be liable in civil damages for any acts or omissions relating to ~~such~~ the services rendered, unless ~~such~~ the acts or omissions amount to wanton conduct or intentional wrongdoing.

(e) The Division of Motor Vehicles shall revoke the drivers license of a person convicted of violating subsection (a) of this section for a period of one year, unless the court makes a finding that a longer period of revocation is appropriate under the circumstances of the case. If the court makes this finding, the Division of Motor Vehicles shall revoke that person's drivers license for two years. Upon a first conviction only for a violation of subsection (a) of this section, a trial judge may allow limited driving privileges in the manner set forth in G.S. 20-179.3(b)(2) during any period of time during which the drivers license is revoked."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-166.2. Duty of passenger to remain at the scene of an accident.

(a) The passenger of any vehicle who knows or reasonably should know that the vehicle in which he or she is a passenger is involved in an accident or collision shall not willfully leave the scene of the accident by acting as the driver of a vehicle involved in the accident until a law enforcement officer completes the investigation of the accident or collision or authorizes the passenger to leave, unless remaining at the scene places the passenger or others at significant risk of injury.

Prior to the completion of the investigation of the accident by a law enforcement officer, or the consent of the officer to leave, the passenger may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from a significant risk of injury. If the passenger does leave the scene of an accident by driving a vehicle involved in the accident for a reason permitted by this subsection, the passenger must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class H felony if the accident or collision is described in G.S. 20-166(a). A willful

violation of this subsection is a Class 1 misdemeanor if the accident or collision is a reportable accident described in G.S. 20-166(c).

(b) In addition to complying with the requirement of subsection (a) of this section, the passenger shall give the passenger's name, address, drivers license number, and the license plate number of the vehicle in which the passenger was riding, if possible, to the person struck or the driver or occupants of any vehicle collided with, provided that the person or persons are physically and mentally capable of receiving the information, and shall render to any person injured in the accident or collision reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person. A violation of this subsection is a Class 1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 4:46 p.m. on the 2nd day of October, 2005.

S.B. 486 **Session Law 2005-461**

AN ACT TO INCREASE THE PENALTY FOR DISCHARGING CERTAIN WEAPONS INTO OCCUPIED PROPERTY IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-34.1 reads as rewritten:

"§ **14-34.1. Discharging certain barreled weapons or a firearm into occupied property.**

(a) Any person who willfully or wantonly discharges or attempts to ~~discharge:~~

~~(1)~~ ~~Any~~ discharge any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per ~~second; or~~

~~(2)~~ ~~A firearm~~

second into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied is guilty of a Class E felony.

(b) A person who willfully or wantonly discharges a weapon described in subsection (a) of this section into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation is guilty of a Class D felony.

(c) If a person violates this section and the violation results in serious bodily injury to any person, the person is guilty of a Class C felony."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law upon approval of the Governor at 4:51 p.m. on the 2nd day of October, 2005.

S.B. 629 **Session Law 2005-462**

AN ACT TO PROVIDE FOR THE REDEVELOPMENT OF CERTAIN MANUFACTURING DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. Manufacturing redevelopment districts: legislative findings.

(a) The General Assembly of North Carolina makes the following findings regarding the need for manufacturing redevelopment districts:

(1) Economic development in the State will be served by providing an opportunity to restart production in manufacturing facilities designed for targeted industries such as photographic materials, digital inkjet products, digital photographic applications, and other photographic printing technology, thereby providing employment opportunities for the residents of North Carolina.

(2) When an existing facility can be modified to meet the needs of the new industry and thereby preserve and create jobs, it is in the public interest to provide a mechanism for these modifications to occur.

(3) Economically distressed counties continue to lose manufacturing jobs, and the General Assembly must act to create new jobs for citizens residing in those counties.

(4) The health and safety of the citizens of North Carolina will be served through the assessment and remediation of known and unknown environmental conditions at manufacturing facilities.

(5) The public interest will be served by State acquisition of title to real property located within significant State property holdings after manufacturing operations have permanently ceased, remediation has been completed, and the buildings associated with the manufacturing operation have been removed.

(6) The public interest of the State will be served by encouraging owners of idle manufacturing facilities to transfer ownership in property in order to make it possible for new operators to restart production at these facilities.

(b) For purposes of this act, a new operator is an entity that proposes to restart operations at a manufacturing facility located within a manufacturing redevelopment district created under this act.

SECTION 2. Manufacturing redevelopment districts: purpose.

A manufacturing redevelopment district shall be established to provide manufacturing, research and development, and related service and support jobs to citizens of the State while ensuring the remediation of known and unknown environmental conditions at manufacturing facilities.

SECTION 3. Manufacturing redevelopment districts: establishment; criteria.

(a) A manufacturing redevelopment district may be established on any parcel or tract of land or on any combination of contiguous parcels or tracts of land as provided in this section. To establish a manufacturing redevelopment district, the new operator of the manufacturing facilities located within the boundaries of the district shall certify to the Secretary of State that the district meets all of the criteria set out in this section. The

certification shall describe the boundaries of the district by metes and bounds and shall set out the specific financial mechanism that guarantees completion of the assessment and remediation program as required under subdivision (b)(8) of this section. This certification shall constitute prima facie evidence that these criteria have been met. The district shall be considered to be established as a manufacturing redevelopment district on the date the certification is filed. Once established, a manufacturing redevelopment district shall continue to exist until title to the real property comprising the district is transferred to the State as provided in Section 7 of this act.

(b) A manufacturing redevelopment district may be established only if all of the following criteria are met at the time the district is to be established:

(1) The real property is located in a county that is economically distressed. For purposes of this subdivision, a county shall be considered economically distressed if, as of the date of the most recent annual assessment by county officials, all of the following apply:
   a. The average weekly wage in the county is less than five hundred twenty-five dollars ($525.00) per person.
   b. The percentage of unemployed workers is greater than six percent (6%).
   c. The percentage of citizens who are at or below the federal poverty level, as determined by the most recent federal decennial census, is greater than nine percent (9%).

(2) All of the real property comprising the district is a privately owned in-holding of 50 acres or more within a State forest of 10,000 acres or more.

(3) The district contains a manufacturing facility that has been out of production for two years or more.

(4) Failure to restart the manufacturing facility would result in a permanently lost opportunity to create 50 or more jobs.

(5) The manufacturing facility has a total square footage of 500 square feet or more.

(6) The new operator of the manufacturing facility guarantees investment of at least five million dollars ($5,000,000) in the manufacturing facility within 12 months following the creation of the manufacturing redevelopment district and guarantees employment of at least 50 persons.

(7) The new operator of the facility has done all of the following:
   a. Accepted responsibility for all requirements of this act.
   b. Accepted responsibility for assessment and remediation of known and unknown environmental conditions on the property that comprises the manufacturing redevelopment district in accordance with this act and other applicable environmental laws, regulations, and rules.
   c. Agreed to assume all other liabilities as provided in Section 5 of this act.
   d. Agreed to remove all buildings in the manufacturing redevelopment district when the new operator permanently ceases manufacturing operations.
   e. Agreed to comply with other requirements of Section 7 of this act.

(8) The new operator provides financial assurance, acceptable to the Department of Environment and Natural Resources, for the fulfillment of the requirements set out in Section 3(b)(7)b of this act. Such financial assurance shall include a prefunded escrow account or other financing mechanism, in an amount not less than five million dollars ($5,000,000), that runs in favor of the State in the event of a default. The establishment of the prefunded account shall not relieve the new operator of its obligation to comply with applicable laws in assessing and remediating the manufacturing facility. The Department of Environment and Natural Resources shall: (i) review the financial assurance contemplated by this act in light of reasonably available financial assurance and guaranteed remediation products and in light of known and reasonably anticipated unknown environmental conditions at the manufacturing redevelopment district, and (ii) complete its review of the financial assurance within 30 days of receipt by the Department of a request for such review by the new operator accompanied by a description of the financial assurance. The requirement that the financial assurance is acceptable to the Department shall be waived if the Department does not complete its review within such 30 day period.

(9) The owner of the real property has entered into an agreement to transfer the real property to be used as the manufacturing redevelopment district to a local government entity. This local government entity has, in turn, entered into an agreement to transfer the real property comprising the district to the new operator under a condition that when manufacturing operations permanently cease, the new operator will comply with the requirements of Section 7 of this act.

SECTION 4. Manufacturing redevelopment districts: qualified immunity for third-party claims; enforcement of environmental requirements.

(a) No person who owned or had an interest in any real property within a manufacturing redevelopment district at any time prior to the establishment of the district shall be liable to any private or third party for civil claims arising out of the presence of oil, a hazardous substance, or a hazardous waste on the real property if the cause of action arose after transfer of the property to the new operator under this act, regardless of when the oil, hazardous substance, or hazardous waste was brought to or discovered at the site. The qualified immunity provided by this section shall attach at the time that the new operator submits its certification to the Secretary of State pursuant to Section 3(a) of this act or at the time that the real property comprising the manufacturing redevelopment district is transferred to the new operator, whichever occurs later. The qualified immunity provided by this section is with respect to any theory of legal liability, including, but not limited to, any claim of negligence, nuisance, or trespass, or arising under other common law principles, or arising under any State statute or rule, including, but not limited to, Article 9 of Chapter 130A of the General Statutes, Articles 21 and 21A of Chapter 143 of the General Statutes, and rules adopted pursuant to those Articles. The qualified immunity provided by this section shall continue in effect after the termination of the manufacturing redevelopment district.

(b) Nothing in this act shall be construed to prevent the State from enforcing remediation standards, monitoring, or compliance requirements specifically required by

the United States Environmental Protection Agency to be enforced by the State as a condition to receiving and retaining federal funds or program approval, authorization, or delegation.

SECTION 5. Manufacturing redevelopment districts: assignment of liability.

In addition to any liability under any provision of law, the new operator of the manufacturing redevelopment district or its successor in interest shall be liable for all claims for which any prior owner has been granted qualified immunity by Section 4 of this act. This assignment of liability shall continue in effect after the termination of the manufacturing redevelopment district. The new operator or its successor in interest shall have all rights, claims, and defenses that are or would have been available to any prior owner with respect to claims for which the prior owner has been granted qualified immunity.

SECTION 6. Manufacturing redevelopment districts: transfer of property to a subsequent manufacturer.

The new operator or its successor in interest shall not transfer the property comprising the manufacturing redevelopment district to any person, including without limitation any corporate affiliate of the new operator, until such person has met all of the requirements applicable to a new operator under subdivisions 7 through 9 of Section 3(b) of this act.

SECTION 7. Manufacturing redevelopment districts: donation and transfer of the district; transfer to the State.

(a) The local government entity to which the real property comprising the manufacturing redevelopment district is transferred pursuant to Section 3(b)(9) of this act shall accept title to the real property and shall immediately transfer such title to the new operator. The consideration for the transfer by the local government entity of title to the new operator shall be the creation of jobs and economic opportunities that will result from restarting manufacturing operations on the real property.

(b) When the new operator or its successor in interest permanently ceases manufacturing operations at the facility within the manufacturing redevelopment district, it shall expeditiously do all of the following:

(1) Demolish and remove all buildings in the manufacturing redevelopment district.

(2) Perform any additional assessment and remediation required by the Department of Environment and Natural Resources in accordance with applicable environmental laws.

(3) Tender transfer of title to all of the land constituting the manufacturing redevelopment district to the State of North Carolina upon completion of any such assessment and remediation.

(c) The State Property Office shall accept donation of the property for allocation to the contiguous State forest upon demonstration that all buildings have been removed and remediation completed to the satisfaction of the Secretary of the Department of Environment and Natural Resources in light of the requirements of this section.

(d) When the State Property Office accepts donation of the property as provided in subsection (c) of this section, the manufacturing redevelopment district shall terminate.

SECTION 8. Effective date. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law without signature of the Governor on the 3rd day of October, 2005

H.B. 1227 **Session Law 2005-463**

AN ACT TO CLARIFY THE MOTOR VEHICLE REPAIR ACT AND TO AMEND MOTOR VEHICLE FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-354.2 reads as rewritten:

"§ **20-354.2. Definitions.**

As used in this act:

(1) "Customer" means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) "Motor vehicle repair" means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, <u>shop supply fees, hazardous material disposal fees incident to a repair,</u> and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop."

SECTION 2. G.S. 20-305 reads as rewritten:

"§ **20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

….

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor

vehicle dealers of the same line make in that relevant market ~~area.~~area; or

5. To the relocation of an existing new motor vehicle dealer to a location within four and one-half miles of the existing site of the new motor vehicle dealership if the line make has been operating on a regular basis from the existing site for a minimum of 50 years immediately preceding the effective date of this sub-subdivision, provided that the relocation site not be located within four miles of another licensed new motor vehicle dealer for the same line make of motor vehicle.

…"

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

Became law without signature of the Governor on the 3rd day of October, 2005

VETOES
OF
GOVERNOR MICHAEL F. EASLEY

G.S. 120-34(a) provides that "In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Bill Number	Title of Bill
SENATE BILL 130	AN ACT TO CONVEY CERTAIN DESCRIBED PROPERTY TO THE COUNTY OF CURRITUCK AND CERTAIN PROPERTY TO JOHNSON & WALES UNIVERSITY.
HOUSE BILL 706	AN ACT TO AMEND THE TEACHER CERTIFICATION LAW TO FACILITATE THE HIRING OF TEACHERS

Veto Message for Senate Bill 130

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

MICHAEL F. EASLEY
GOVERNOR

March 25, 2005

GOVERNOR'S OBJECTIONS AND VETO MESSAGE

Senate Bill 130, "An act to convey certain described property to the County of Currituck and certain property to Johnson & Wales University," among other things, requires the conveyance of a deed for the James K. Polk Building to the Johnson and Wales University.

Pursuant to the mandate of Section 19.5 of the 2004-05 budget bill which states **"Upon the sale of the James K. Polk Building in the City of Charlotte..."** *(emphasis added)*,"the State put the property up for bid.

On March 24, 2005, the Council of State approved the sale of the Polk Building to Trinity Capital Advisors, LLC, pursuant to the legally established process set up for disposal of surplus state property.

Since the property has been sold and deeded for $5.25 million, it is not available to be deeded to another party as per this legislation, and such a conveyance as contemplated in the bill would be illegal.

Therefore, I veto the bill.

Michael F. Easley

The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this 25 *day of* March *2005 at* 11:56 a. *for reconsideration by that body.*

Received from Governor
MAR 26 2005
10:15 AM
Janet Pruitt

Veto Message for House Bill 706

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

MICHAEL F. EASLEY
GOVERNOR

September 29, 2005

GOVERNOR'S OBJECTIONS AND VETO MESSAGE

House Bill 706, "An act to amend the teacher certification law to facilitate the hiring of teachers."

This bill reduces the North Carolina teaching standards to the lowest in America. It cheats our children out of a quality education and dishonestly classifies unqualified teachers as "highly qualified."

Further, it restricts the authority of the State Board of Education to certify teachers and puts it within the General Assembly.

Therefore, I veto the bill.

Michael F. Easley

The bill, having been vetoed, is returned to the Clerk of the North Carolina House of Representatives on this 29th day of September 2005 at 11 41 AM for reconsideration by that body.

RECEIVED FROM GOVERNOR
SEP 29 2005 1:00 pm
Denise Weeks

LOCATION: 116 WEST JONES STREET • RALEIGH, NC • TELEPHONE: (919) 733-5811

RESOLUTIONS

OF THE

STATE OF NORTH CAROLINA

REGULAR SESSION 2005

H.J.R. 26 **Resolution 2005-1**

A JOINT RESOLUTION HONORING THOSE WHO PARTICIPATED IN THE SIT-IN MOVEMENT THAT BEGAN IN THE CITY OF GREENSBORO ON THE 45TH ANNIVERSARY OF THE MOVEMENT.

Whereas, on February 1, 1960, Ezell Blair, Jr., David Richmond, Joseph McNeil, and Franklin McCain, freshmen at North Carolina A & T State University, took a bold stand against rampant segregation in this country by sitting at the all-white lunch counter in the F.W. Woolworth department store in Greensboro and demanding service, which was denied; and

Whereas, on the following day, these young men returned to the store along with Billy Smith and Clarence Henderson, and others, only to be denied service again; and

Whereas, these events drew widespread media attention bringing focus to discriminatory practices against Blacks in the South and spotlighting the courage of these students; and

Whereas, the sit-ins fueled the movement to desegregate public facilities in this country and led to sleep-ins in segregated motels, kneel-ins in segregated churches, and swim-ins in segregated pools; and

Whereas, by August 1961, more than 70,000 people had participated in similar demonstrations across the country; and

Whereas, the actions of these brave young people were instrumental in the adoption of anti-discriminatory laws and policies that have led to a more diverse nation; and

Whereas, to acknowledge and honor the sacrifices and actions of the A & T students and many others, activities have been planned to commemorate the 45th anniversary of the Greensboro sit-ins; Now, therefore,

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

SECTION 1. The General Assembly honors the courageous actions of Ezell Blair, Jr., David Richmond, Joseph McNeil, and Franklin McCain to end racial

segregation. The General Assembly further honors the memory of David Richmond, who died in 1990.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the International Civil Rights Center and Museum, Ezell Blair, Jr. (Jibreel Khazan), Joseph McNeil, and Franklin McCain, and the family of David Richmond.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of February, 2005.

S.J.R. 81 **Resolution 2005-2**

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF FRANKLIN ON THE TOWN'S 150TH ANNIVERSARY.

Whereas, in 1820, the North Carolina General Assembly set aside 400 acres as the seat of government in Macon County and authorized the sale of 20 town lots to establish the town site; and

Whereas, Jesse Franklin, together with James Meabin, was appointed to survey the 400 acres and locate the county seat, now the Town of Franklin in its present site; and

Whereas, the first house, a small round log cabin, was built shortly thereafter by Joshua Roberts; and

Whereas, on December 3, 1832, the Baptist Church was granted three acres and 72 poles of land, and on January 10,1835, the Methodist-Episcopal Church received a grant for three acres of land at $3.00 an acre; and

Whereas, the Town of Franklin was established by an act of the General Assembly on February 10, 1855, and was named for Jesse Franklin, the surveyor; and

Whereas, the act provided “corporate limits of said town shall be one-half mile from the courthouse in every direction”; and

Whereas, the Sheriff of Macon County called for the first town election to be held at the courthouse in October 1855, when five commissioners were elected – J.M. Lyle, John Reid, N.G. Allman, J.R. Siler, and J. Jackson Johnson; and

Whereas, on December 12, 1855, the five commissioners appointed J.R. Siler, Chairman; J. Jackson Johnson, Secretary and Treasurer; Jonathan M. Bryson, Town Magistrate, and A.M. Bell, Constable; and

Whereas, much of the early history contained in the town minutes between 1855 and 1903 was destroyed in a fire; and

Whereas, in 1946, the Town purchased the sacred Nikwasi Mound site, the center of an ancient village of the Middle Cherokees that was listed on the National Historical Registry in September 1981; and

Whereas, Dr. Edgar Angel and Dr. Furman Angel established a medical practice and medical facility in 1924 – the forerunner of Angel Medical Center, a modern facility with 25 physicians serving Western North Carolina; and

Whereas, a series of town parks have been connected by a two-mile greenway located on the bank of the Little Tennessee River; and

Whereas, the Town of Franklin has become a commercial, industrial, and retail business center for Western North Carolina; and

Whereas, land has been purchased and plans are being drawn for the relocation and construction of a new town hall, police station, offices, and equipment building; and

Whereas, the preserved town square along with the conversion of the old jail to a museum shows the town's respect for the town's past and optimism for its future; Now, therefore,

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

SECTION 1. The General Assembly wishes to honor the memory of the founders and early residents of the Town of Franklin for their contributions to North Carolina.

SECTION 2. The General Assembly congratulates the Town of Franklin on its 150th anniversary and encourages the people of this State to join the citizens of Franklin in celebrating this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Franklin.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of February, 2005.

S.J.R. 84 **Resolution 2005-3**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HUBERT B. HUMPHREY, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Hubert B. Humphrey, Jr. was born on October 1, 1928, in the City of Charlotte to Hubert B. Humphrey, Sr. and Leila M. Dees Humphrey; and

Whereas, Hubert B. Humphrey, Jr. attended Mars Hill College prior to earning a bachelor's degree from Wake Forest University in 1948 and a law degree from the University of North Carolina at Chapel Hill in 1951; and

Whereas, Hubert B. Humphrey, Jr. served as a law clerk for the chief judge of the United States Court of Appeals for the 4th Circuit; and

Whereas, Hubert B. Humphrey, Jr. served as an officer of the United States Army during the Korean War from 1951 to 1953; and

Whereas, in 1953, Hubert B. Humphrey, Jr. returned to North Carolina, where he joined the law firm that is now Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. in Greensboro of which he later became a partner; and

Whereas, Hubert B. Humphrey, Jr. served with honor and distinction in the General Assembly as a member of the House of Representatives during the 1959 Session and a member of the Senate during the 1961 Session; and

Whereas, Hubert B. Humphrey, Jr. served his community and profession in many worthwhile capacities, serving as a Rotarian and as a member of the Board of Trustees of the Z. Smith Reynolds Foundation, North Carolina State Bar, American Bar Association, American Law Institute, and the North Carolina Supreme Court Historical Society; and

Whereas, Hubert B. Humphrey, Jr. was an avid supporter of Wake Forest University, which he demonstrated in his service as a member of the Board of Directors

of the Baptist Medical Center and as a member and Chair of both the University's Board of Visitors and Board of Trustees; and

Whereas, Hubert B. Humphrey, Jr. was the recipient of the 2002 Distinguished Alumnus Award from the School of Law at the University of North Carolina at Chapel Hill; and

Whereas, Hubert B. Humphrey, Jr. died on March 18, 2003; and

Whereas, to honor his memory, the Z. Smith Reynolds Foundation established the "Hubert Humphrey School Improvement Award," which gives $10,000 annually to the most improved Guilford County high school to be used for professional development of teachers, administrators, and staff; and

Whereas, Hubert B. Humphrey, Jr. is survived by Jacqueline Mabie Humphrey, Hilary Humphrey Pitts, Lyle Humphrey Johnson, Virginia Bladen Pitts, and Jacqueline Adams Johnson; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Hubert B. Humphrey, Jr. and recognizes his public service to the State and Wake Forest University.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Hubert B. Humphrey, Jr. for the loss of a beloved family member.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of February, 2005.

H.J.R. 19 **Resolution 2005-4**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES DONALD "DON" GOINS, FORMER CHIEF ENGINEER OF OPERATIONS OF THE DIVISION OF HIGHWAYS.

Whereas, James Donald "Don" Goins first joined the Department of Transportation as a temporary employee and, after receiving a Bachelor of Science Degree in Civil Engineering from North Carolina State University, entered the Highway Engineer-in-Training Program in 1965; and

Whereas, Don Goins successfully completed the training program in 1967 and was named a Highway Engineer; and

Whereas, Don Goins worked on the site of various projects for 28 years using his skills as a registered professional engineer and land surveyor to better the State's roads and highways; and

Whereas, Don Goins became an Assistant Division Engineer for Maintenance in Highway Division 10 in 1974; and

Whereas, Don Goins was named Division Engineer for Highway Division 10 in 1984 and served in that capacity until he was named Chief Engineer of Operations for the Division of Highways; and

Whereas, Don Goins served as Chief Engineer of Operations for 10 years; and

Whereas, Don Goins was a loyal State employee for 39 years; and

Whereas, Don Goins died on September 19, 2003, a few weeks prior to his planned retirement on October 1, 2003; and

Whereas, Don Goins will be sorely missed by his family, friends, and colleagues; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of James Donald Goins and expresses the appreciation of this State and its citizens for his many years of dedication to the State of North Carolina and to the Department of Transportation.

SECTION 2. The General Assembly extends its deepest sympathy to the family of James Donald Goins for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James Donald Goins.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of February, 2005.

H.J.R. 47 **Resolution 2005-5**

A JOINT RESOLUTION HONORING THE FOUNDERS OF CREEDMOOR ON THE TOWN'S 100TH ANNIVERSARY.

Whereas, the Town of Creedmoor, located in southern Granville County, will be celebrating 100 years of incorporation on March 6, 2005; and

Whereas, the Town was established as Creedmore by the General Assembly on March 12, 1895, but was renamed Creedmoor when it was reincorporated in 1905; and

Whereas, the first officers of Creedmoor included Mayor Joseph L. Peed and Commissioners Dr. J. F. Sanderford, Isaac W. Bullock, S. C. Lyon, Claude V. Garner, and L. H. Longmire; and

Whereas, the citizens of Creedmoor have made significant contributions to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, Creedmoor has continued to grow and prosper through the continued dedication, insight, and planning of the Town's concerned leaders and citizens; and

Whereas, plans have been made to celebrate the Town's historic anniversary on March 19, 2005, and during other times throughout the year; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the founders of the Town of Creedmoor and congratulates the Town on its 100th anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Creedmoor.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of February, 2005.

S.J.R. 71 **Resolution 2005-6**

A JOINT RESOLUTION INFORMING HIS EXCELLENCY, GOVERNOR MICHAEL F. EASLEY, THAT THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

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

SECTION 1. A committee of six Senators appointed by the President Pro Tempore of the Senate and six Representatives appointed by the Speaker of the House of Representatives shall notify His Excellency, Governor Michael F. Easley, that the General Assembly is organized and is ready to proceed with public business and to invite him to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 7:00 P.M. on February 21, 2005.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of February, 2005.

S.J.R. 180 **Resolution 2005-7**

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF SALEMBURG ON THE TOWN'S 100TH ANNIVERSARY.

Whereas, the Town of Salemburg, located in northwestern Sampson County, will be celebrating 100 years of incorporation on February 21, 2005; and

Whereas, the Town was established as Salem but was renamed Salemburg when it was incorporated in 1905 by the General Assembly; and

Whereas, the first officers of Salemburg included Mayor A.F. Howard, Commissioners Dr. G.L. Sykes, C.S. Royal, S.A. Howard, F.D. Parker, and J.E. Howard, and Constable Ivy Royal; and

Whereas, the citizens of Salemburg have made significant contributions to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, Salemburg has continued to grow and prosper through the continued dedication, insight, and planning of the Town's concerned leaders and citizens; and

Whereas, plans have been made to celebrate the Town's historic anniversary on February 21, 2005, and during other times throughout the year; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the founders of the Town of Salemburg and congratulates the Town on its 100th anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Salemburg.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of February, 2005.

S.J.R. 182 **Resolution 2005-8**

A JOINT RESOLUTION PROVIDING THAT THE GENERAL ASSEMBLY MAY MEET IN BATH TO COMMEMORATE THE TRICENTENNIAL OF THAT TOWN.

Whereas, Section 20 of Article II of the North Carolina Constitution states that the General Assembly may jointly adjourn to any other place; and

Whereas, the General Assembly has been invited to convene in Bath on March 8, 2005, to commemorate the tercentenary of that town; and

Whereas, the General Assembly convened in Bath in 1743, 1744, and 1752; Now, therefore,

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

SECTION 1. On March 8, 2005, the General Assembly shall convene at 11:00 A.M. in Bath at Bath Elementary School.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of February, 2005.

S.J.R. 205 **Resolution 2005-9**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF FREDERICK DOUGLAS ALEXANDER, FORMER MEMBER OF THE GENERAL ASSEMBLY, IN OBSERVANCE OF BLACK HISTORY MONTH.

Whereas, Frederick Douglas "Fred" Alexander was born in the City of Charlotte on February 21, 1910, to Zechariah and Louise Bates McCullough Alexander; and

Whereas, Fred Alexander attended the public schools in Charlotte and in 1931 graduated from Lincoln University in Pennsylvania; and

Whereas, Fred Alexander returned to Charlotte, where he began working in his father's funeral home, and quickly became active in local politics; and

Whereas, Fred Alexander grew to be a strong leader in helping to advance the causes of African-Americans in Charlotte by supporting voter registration drives, advocating the appointment of black police officers and mail carriers, requesting that business courses be taught at black high schools, and urging improved health care for blacks; and

Whereas, in 1949, Fred Alexander served as executive secretary of the Citizens Committee for Political Action, which sponsored African-American candidates for membership on the city council and the school board; and

Whereas, Fred Alexander became the first African-American to serve on the Charlotte Chamber of Commerce in 1962 and the Mecklenburg County Board of Public Welfare in 1963; and

Whereas, Fred Alexander was elected to his first term on the Charlotte City Council in 1965, becoming the Council's first African-American member since the 1890s, and he served until 1974; and

Whereas, during his tenure, Fred Alexander served as Charlotte's first African-American mayor pro tem from 1971 to 1973 and was instrumental in the passage of an antidiscrimination ordinance in 1968, the removal of the fence separating the black Pinewood and the white Elmwood cemeteries in 1969, the construction of a fire station for northwest Charlotte in 1970, and the preservation of the Thompson Orphanage Chapel; and

Whereas, Fred Alexander was elected to the General Assembly and served with honor and distinction for three terms as a member of the Senate from 1975 to 1980; and

Whereas, while a State senator, Fred Alexander served as vice-chair of the Higher Education Committee and rendered service as a member of such committees as Finance, Constitutional Amendments, and Local Government and Regional Affairs; and

Whereas, in 1979, Fred Alexander sponsored legislation designating the second week in February as Black History Week in North Carolina; and

Whereas, Fred Alexander also made contributions as president of the Mint Museum of Art, as a trustee of Johnson C. Smith University, and as a member of the Charlotte-Mecklenburg Council on Human Relations and the Southern Regional Council; and

Whereas, Fred Alexander served for more than 20 years as an agent and member of the board of directors of the Southern Fidelity Mutual Insurance Company and as manager of Double Oaks Apartments; and

Whereas, Fred Alexander was a member of numerous civic and fraternal organizations, including the Masons and Shriners and was an active member of the University Park Baptist Church, where he served as Chair of the Board of Trustees and the Finance Committee, and as a Sunday schoolteacher; and

Whereas, Fred Alexander died on April 13, 1980, leaving to mourn his wife, Frances Dugas Alexander, who died in 1986, and a daughter, Theodora; and

Whereas, it is especially fitting that Fred Alexander, a man who worked so hard to improve the lives of African-Americans in this State, be commemorated during the observance of Black History Month; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Frederick Douglas Alexander and expresses gratitude and appreciation for his life and devoted service to his community and State.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Frederick Douglas Alexander.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of March, 2005.

H.J.R. 100 **Resolution 2005-10**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF PAUL P. HARRIS AND THE FOUNDERS OF ROTARY INTERNATIONAL ON THE ORGANIZATION'S ONE HUNDREDTH ANNIVERSARY.

Whereas, on February 23, 1905, a group of friends led by Paul P. Harris met in Chicago to establish a professional club in their community; and

Whereas, because the early meetings of this group rotated among the businesses in the area, the name "Rotary" was chosen for this newly formed organization; and

Whereas, the popularity of Rotary increased, and clubs quickly formed throughout the United States and around the world; and

Whereas, in 1922, the name Rotary International was adopted; and

Whereas, Paul P. Harris died on January 27, 1947, at the age of 79; and

Whereas, today, more than 1.2 million business and professional leaders belong to over 31,000 Rotary clubs in 166 countries worldwide; and

Whereas, for 100 years, Rotary members have been committed to serving their communities by participating in projects that address important issues such as illiteracy, poverty, hunger, children-at-risk, career development, and global health concerns; and

Whereas, Rotary clubs are nonpolitical, nonreligious, and open to all cultures, races, and creeds; and

Whereas, the existence of Rotary has made a tremendous difference in the communities in which we live; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Paul P. Harris and the founders of Rotary International for their role in establishing the world's first service organization.

SECTION 2. The General Assembly congratulates Rotary International on its 100th anniversary and commends the organization for its continued service around the world.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the president of Rotary International.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of March, 2005.

H.J.R. 361 **Resolution 2005-11**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. CARTER G. WOODSON IN HONOR OF BLACK HISTORY MONTH.

Whereas, since 1976, February has been recognized as Black History Month across the United States; and

Whereas, Black History Month evolved from "Negro History Week", which was established in 1926 by Dr. Carter G. Woodson, a Harvard-educated

African-American author and scholar, who wanted to bring national attention to the contributions African-Americans have made to this country; and

Whereas, Dr. Carter G. Woodson died on April 3, 1950; and

Whereas, Black History Month serves as a time to reflect upon past sacrifices and accomplishments of African-Americans and to contemplate future goals in correcting the disparities that exist between African-Americans and other races; and

Whereas, African-Americans have played significant roles in the history of North Carolina's economic, cultural, and social development; and

Whereas, North Carolina is the birthplace of numerous influential African-American leaders and role models in their fields, including North Carolina Supreme Court Justice Henry E. Frye, educators Dr. Charlotte Hawkins Brown and Dr. Simon Green Atkins, politician George Henry White, newspaper editor Alex Manly, businessman John H. Merrick, craftsman Thomas Day, musicians Thelonious Monk and John Coltrane, and athletes George "Meadowlark" Lemon and Ray Charles "Sugar Ray" Leonard; and

Whereas, it is important to recognize and acknowledge that Black history is American history; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Dr. Carter G. Woodson for establishing Black History Month.

SECTION 2. The General Assembly acknowledges Black History Month and encourages all North Carolinians to join in observing Black History Month.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of March, 2005.

H.J.R. 375 **Resolution 2005-12**

A JOINT RESOLUTION HONORING NORTH CAROLINA'S GREAT NASCAR LEGENDS RALPH DALE EARNHARDT, SR., RALPH LEE EARNHARDT, LEE PETTY, ADAM KYLER PETTY, JULIUS TIMOTHY "TIM" FLOCK AND HIS COMPANION JOCKO FLOCKO, EDWIN KEITH "BANJO" MATTHEWS, CURTIS MORTON TURNER, EDWARD GLENN "FIREBALL" ROBERTS, ELZIE WYLIE "BUCK" BAKER, SR., AND AFRICAN-AMERICAN RACING PIONEER WENDELL OLIVER SCOTT, AND ENCOURAGING NASCAR TO SELECT NORTH CAROLINA AS THE LOCATION FOR ITS HALL OF FAME.

Whereas, North Carolina takes great pride in its position as the stock car racing capital in the United States and the world and is the "Hub of Motorsports in the United States"; and

Whereas, motorsports events have become and remain hugely popular with the people of North Carolina, with more than one million fans attending motorsports events in the State each year, thereby substantially enhancing the tourism industry in North Carolina; and

Whereas, after World War II, stock car racing evolved in the foothills, the pinewoods, and the Piedmont, quickly becoming one of the deepest traditions in North Carolina popular culture; and

Whereas, North Carolina's motorsports industry has an annual economic impact of $5.1 billion and creates an excess of 24,000 jobs with an average income of over $69,000; and

Whereas, North Carolina is in the running to be the site of the National Association for Stock Car Auto Racing (NASCAR) Hall of Fame; and

Whereas, 82% of the Nextel Cup Series, 72% of the Busch Series, and 55% of the Craftsman Truck Series teams are headquartered in North Carolina; and

Whereas, Lowe's Motor Speedway, which is located in North Carolina, hosts two NASCAR Nextel Cup Series and NASCAR Busch Series races, the NASCAR Nextel All-Star Challenge, and a number of other important NASCAR events; and

Whereas, North Carolina is the ideal location for the NASCAR Hall of Fame because it is host to the NASCAR Business Cluster; and

Whereas, North Carolina was host to the first race held in NASCAR's top division – at the time called "Strictly Stock", currently known as Nextel Cup – on June 19, 1949, at the old Charlotte Speedway; and

Whereas, the field of 33 drivers in the first "Strictly Stock" contained nine men who would later achieve Hall of Fame status, including North Carolinians Elzie Wylie "Buck" Baker, Sr., Jim Paschal, Lee Petty, and Herb Watson Thomas; and

Whereas, North Carolina has produced more NASCAR Nextel Cup (formerly Grand National and Winston Cup) champions than any other state in the nation; and

Whereas, a number of NASCAR legends have significant ties to this State, including Ralph Dale Earnhardt, Sr., who died February 18, 2001; Ralph Lee Earnhardt, who died September 26, 1973; Lee Petty, who died April 5, 2000; Adam Kyler Petty, who died May 12, 2000; Julius Timothy "Tim" Flock, who died March 31, 1998, and his companion monkey Jocko Flocko; Edwin Keith "Banjo" Matthews, who died October 2, 1996; Curtis Morton Turner, who died October 4, 1970; Edward Glenn "Fireball" Roberts, who died July 2, 1964; Elzie Wylie "Buck" Baker, Sr., who died April 14, 2002; and

Whereas, Wendell Oliver Scott, who died December 22, 1990, is the only African-American ever to have won a Grand National Series event in NASCAR history; and

Whereas, there are more than six NASCAR-related driving schools headquartered in North Carolina, 10 museums in North Carolina dedicated to motorsports, and the offices of seven motorsports sanctioning bodies, including NASCAR's licensing and research development offices; and

Whereas, North Carolina is the location of two of NASCAR's major television broadcast and production industry partners, "NASCAR Images" and "The Speed Channel"; and

Whereas, several of the constituent institutions of The University of North Carolina System offer programs concentrating in motorsports and automotive engineering; and

Whereas, North Carolina is the home of the prestigious NASCAR Technical Institute, a career school focusing on training and educating tomorrow's workforce in the automotive and motorsports industry, graduating hundreds of students annually who come to North Carolina from all parts of the country to take advantage of this unique opportunity; and

Whereas, several of the North Carolina community colleges offer programs concentrating in motorsports and the performance automotive industries; and

Whereas, on October 21, 2004, Governor Michael F. Easley recognized Bill France, Jr., past Chairman and CEO of NASCAR, with the "Order of the Long Leaf Pine"; and

Whereas, North Carolina has earned the distinction of being the home of the NASCAR racing community and should be the home of the NASCAR Hall of Fame; Now, therefore,

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

SECTION 1. The North Carolina General Assembly honors the memory of NASCAR legends Ralph Dale Earnhardt, Sr., Ralph Lee Earnhardt, Lee Petty, Adam Kyler Petty, Julius Timothy "Tim" Flock, Edwin Keith "Banjo" Matthews, Curtis Morton Turner, Edward Glenn "Fireball" Roberts, Elzie Wylie "Buck" Baker, Sr., and African-American racing pioneer Wendell Oliver Scott, and as a fitting tribute encourages NASCAR to select North Carolina, the "Destination of Choice" for the loyal fan base of NASCAR race fans and home to more than 1,000 businesses involved in or support of the NASCAR racing community, as the site for its Hall of Fame.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the governing body and officers of the National Association for Stock Car Auto Racing.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of March, 2005.

H.J.R. 213 **Resolution 2005-13**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HAROLD LILLARD KENNEDY, JR. FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Harold Lillard Kennedy, Jr. was born on October 8, 1926, in Winston-Salem, North Carolina; and

Whereas, Harold Lillard Kennedy, Jr. was the son of Harold Lillard Kennedy, Sr. and Willie Hall Kennedy and the grandson of Francis Marion Kennedy, Sr., the third President of Winston-Salem State University and of Dr. H. Humphrey Hall, the first African-American physician in Forsyth County; and

Whereas, Harold Lillard Kennedy, Jr. graduated from Atkins High School in 1942, Virginia State University in 1948, and the School of Law at Howard University in 1951; and

Whereas, Harold Lillard Kennedy, Jr. practiced law in New York City from 1952 to 1954 before returning to Winston-Salem in 1955, where he later became the managing partner in the law firm of Kennedy, Kennedy, Kennedy and Kennedy, L.L.P., a law firm that was composed of his wife, Annie Brown Kennedy, and twin sons, Harold L. Kennedy, III, and Harvey L. Kennedy; and

Whereas, Harold Lillard Kennedy, Jr. was a member of the National Bar Association, North Carolina Bar Association, North Carolina Association of Black Lawyers, Forsyth County Bar Association, and Winston-Salem Bar Association; and

Whereas, Harold Lillard Kennedy, Jr. was an active supporter of the Democratic Party, serving as a precinct member and precinct chair and as a participant in local, State, and national campaigns for more than 40 years; and

Whereas, Harold Lillard Kennedy, Jr. served with honor and distinction as a member of the North Carolina House of Representatives during the 1977 Session of the General Assembly, where he was a member of the following Committees: Appropriations, Appropriations Subcommittee on Education, Courts and Judicial Districts, Corrections, Higher Education, Judiciary I, and Professional Law Enforcement Personnel and Practice; and

Whereas, Harold Lillard Kennedy, Jr. was actively involved in the Winston-Salem and Forsyth County communities serving as President of the Winston-Salem/Forsyth County Emancipation Association and as Vice-Chair and Chair of the Redevelopment Commission of Winston-Salem from 1960 to 1974; and

Whereas, Harold Lillard Kennedy, Jr. served on the Board of Directors of the Boy Scouts of America, Arts Council, Experiment in Self-Reliance, Inc., NAACP, YMCA and as President of the Victory Credit Union; and

Whereas, Harold Lillard Kennedy, Jr. also served as a member of the Twin City Kiwanis Club, People for the American Way, Hospice of Winston-Salem, the Society for the Study of African-American History, Sigma Pi Phi Fraternity, and Omega Psi Phi Fraternity; and

Whereas, Harold Lillard Kennedy, Jr. proudly served his country as a member of the United States Army from 1945 to 1946; and

Whereas, Harold Lillard Kennedy, Jr. was a lifelong Episcopalian and a founding member of St. Anne's Episcopal Church, where he was a lay reader and former Junior Warden; and

Whereas, Harold Lillard Kennedy, Jr. died on January 15, 2005, leaving his wife of 53 years, Annie Brown Kennedy, and sons, Michael D. Kennedy, Harold L. Kennedy, III, and Harvey L. Kennedy; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Harold Lillard Kennedy, Jr. and expresses the appreciation and gratitude of this State and its citizens for his life and service to North Carolina.

SECTION 2. The General Assembly extends its deepest appreciation to the family of Harold Lillard Kennedy, Jr. for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Harold Lillard Kennedy, Jr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of March, 2005.

H.J.R. 398 **Resolution 2005-14**

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF COATS ON THE OCCASION OF THE TOWN'S 100TH ANNIVERSARY.

Whereas, the Town of Coats was incorporated on March 4, 1905; and

Whereas, the Town of Coats is named for the late James Thomas Coats, also known as, Elder Tom, who purchased 706 acres of land from heirs of Daniel I. and Sarah Shaw; and

Whereas, Elder Tom Coats gave a right-of-way and land for a depot to the Cape Fear and Northern Railroad in 1902, and thereafter recruited Romelus Lambert to survey and lay out a town around the depot that was to be 250 acres; and

Whereas, J.K. Stewart was appointed as the first mayor of the town in 1905 and P.F. Pope followed as the first elected mayor later that year; and

Whereas, Elder Tom Coats built the first church in the town, Gift Primitive Baptist Church, in 1909 and became the first pastor; and

Whereas, the Coats Brick Mill manufactured brick for the first 13 brick buildings in town by 1913; and

Whereas, the first brick school building was built in the town in 1920; and

Whereas, Coats native, the late Alton Stewart, was the first licensed pilot in North Carolina and had his license signed by Orville Wright on April 6, 1926; and

Whereas, Mrs. Addie Lee Stancil Parrish, a resident of Coats, and the last Confederate widow living in Harnett County died August 20, 1979; and

Whereas, Coats High School consolidated with Erwin and Dunn High Schools in 1985 and a celebration of the closing of the old school, known as the Coats High School Reunion Project, drew in excess of 5,000 people; and

Whereas, a group of Coats citizens salvaged an old two-room schoolhouse and converted it to a Coats History Museum in 1995; and

Whereas, Coats will mark its Centennial on March 4, 2005, and will dedicate a Cotton Planting Museum among other planned celebrations; and

Whereas, the 2,000 citizens of Coats are hardworking, hospitable people who are proud of their past and look forward to their future; and

Whereas, the centennial anniversary of the Town of Coats is worthy of celebration; Now, therefore,

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

SECTION 1. The General Assembly wishes to honor the memory of the founders and early residents of the Town of Coats for their contributions to North Carolina.

SECTION 2. The General Assembly congratulates the Town of Coats on its 100th anniversary and encourages the people of this State to join the citizens of Coats in celebrating this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Coats.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of March, 2005.

H.J.R. 453 **Resolution 2005-15**

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE CIAA BASKETBALL TOURNAMENT WHILE OBSERVING THE TOURNAMENT'S SIXTIETH ANNIVERSARY.

Whereas, the Central Intercollegiate Athletic Association (CIAA), established in 1912, is the oldest African-American athletic conference in the nation; and

Whereas, the CIAA is currently composed of 12 historically black colleges and universities, including Bowie State University, Elizabeth City State University,

Fayetteville State University, Johnson C. Smith University, Livingstone College, North Carolina Central University, St. Augustine's College, St. Paul's College, Shaw University, Virginia State University, Virginia Union University, and Winston-Salem State University; and

Whereas, one of the CIAA's most popular athletic competitions is the conference's annual basketball tournament, which began in 1946; and

Whereas, the CIAA basketball tournament has grown from 3,000 fans in its first year of competition to more than 104,000 fans in 2004; and

Whereas, in 2004, the tournament had an economic impact of over 11.5 million dollars for the host city of Raleigh and generated more than $787,000 in general scholarships for member institutions; and

Whereas, during the tournament, fans from across the nation gather for a weeklong competition of basketball and other social events and participate in such activities as college recruitment, health screenings, and job fairs; and

Whereas, on the 60th anniversary of the tournament, it is only fitting to pay tribute to the founders of the tournament, Coaches John B. McLendon, Jr., Talmadge Hall, John Burr, and Harry Jefferson; and

Whereas, the late John B. McLendon, Jr., often referred to as "Mr. Basketball," served as Coach of the North Carolina Central University's men's basketball team from 1937 to 1952 and was instrumental in the team winning the first CIAA basketball championship; Now, therefore,

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

SECTION 1. The General Assembly honors John B. McLendon, Jr., Talmadge Hall, John Burr, and Harry Jefferson for their role in establishing the CIAA basketball tournament.

SECTION 2. The General Assembly congratulates the CIAA member institutions on 60 years of outstanding basketball competition.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Commissioner of the CIAA.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of March, 2005.

H.J.R. 497 **Resolution 2005-16**

A JOINT RESOLUTION HONORING THE EARLY RESIDENTS OF THE TOWN OF BATH ON THE TOWN'S THREE HUNDREDTH ANNIVERSARY.

Whereas, the Town of Bath, located between Bath Creek and Back Creek in Beaufort County, was settled by Europeans and their slaves in the late 17th century; and

Whereas, during the Colonial era, Bath was originally located in Bath County, which later became Beaufort, Hyde, and Craven Counties; and

Whereas, by 1704, local residents had made plans to establish a town in Bath County that would serve as an important commercial and political center for the colony; and

Whereas, Bath was incorporated by the General Assembly on March 8, 1705, becoming the State's first town; and

Whereas, the Town was laid out by John Lawson, who served as one of the Town's first commissioners and later served as surveyor-general for the Lords Proprietors; and

Whereas, in 1709, John Lawson published a book entitled, "A New Voyage to Carolina," which described his journey through the colony; and

Whereas, on September 27, 1706, the first lots for the Town were sold and by the end of October of that year, a total of 25 people had purchased lots, including Nathaniel Wyersdale, Richard Odeon, Jr., Maurice Luellyn, Thomas Cary, Christopher Gale, George Birkenhead, Thomas Peterson, John Porter, John Worsley, John Lawson, David Perkins, Henry Robinson, Simond Worsley, Nicholas Daw, James Beard, Daniel Mathews, Otho Russel, Giles Shute, Lyonell Reading, Thomas Sparrow, Thomas Worsley, James Walsh, Edmund Pearces, and Joel Martin; and

Whereas, in 1708, Bath had 50 residents and 12 houses; and

Whereas, Bath's proximity to the Pamlico River and the Atlantic Ocean led to the Town becoming the State's first port of entry and the site of the State's first shipyard; and

Whereas, during Bath's early years, a number of merchants set up small stores and several residents established taverns and inns for travelers; and

Whereas, in 1707, John Lawson, Christopher Gale, and Dr. Maurice Luellyn established the Town's first horse-driven grist mill; and

Whereas, Bath's early families, including the Marsh, Van Der Veer, and Bonner families, contributed to the Town's early economy as merchants and owners of such businesses as a turpentine distillery and steam sawmill; and

Whereas, some of Bath's other notable citizens were Christopher Gale, the State's first chief justice, and several of the State's governors, including Robert Daniel, Thomas Cary, Edward Hyde, Charles Eden, and Matthew Rowan; and

Whereas, Edward Teach, the infamous pirate known as Blackbeard, spent several months in Bath and married Mary Ormond, a young resident of the Town; and

Whereas, despite a pardon from Governor Charles Eden, Blackbeard continued his pirating activities before being killed by Lt. Robert Maynard of the Royal Navy near Ocracoke on November 22, 1718; and

Whereas, in its early history, the citizens of Bath withstood conflicts over religion and politics, a yellow fever epidemic, a severe drought, and numerous conflicts with Native Americans; and

Whereas, Bath holds the distinction of serving as the location of the State's first public library, which was established in 1701 with 1,000 books sent from England to the St. Thomas Parish by the Reverend Doctor Thomas Bray, the Anglican founder of the Society for the Propagation of the Gospel in Foreign Parts; and

Whereas, the General Assembly enacted several laws designed to protect and preserve the library, and in 1715, created a commission to oversee the library, which included Charles Eden, Christopher Gale, Tobias Knight, Edward Moseley, Daniel Richardson, Fred Jones, John Porter, Joel Martin, John Drinkwater, John Clark, Patrick Maule, Thomas Worsley, Lionel Reading, James Lee, and Thomas Harding; and

Whereas, Gilbert Towerson's "Application of the Church Catechism" is the only known volume of that library to exist today; and

Whereas, the St. Thomas Parish set up a school for Native Americans and blacks and established the colony's only glebe, a 300-acre farm for the Parish's ministers located on the edge of Town; and

Whereas, St. Thomas Church, the State's oldest existing church, was established in Bath in 1734; and

Whereas, Bath served as the county seat from 1696 to 1785 and the site of Beaufort County's first courthouse, which was built in 1723; and

Whereas, in 1722, the General Assembly enacted legislation allowing Bath to elect a representative to the General Assembly; and

Whereas, Bath hosted the General Assembly in 1744 and 1752, and was once considered a location for the capital of the colony; and

Whereas, the Bath Historic District, the Palmer-Marsh House (ca. 1751), the Bonner House (ca. 1830), and the St. Thomas Church are listed on the National Register of Historic Places; and

Whereas, through its long history, Bath has remained a small village that has held onto its historic roots; and

Whereas, the year 2005 marks Bath's 300th anniversary; and

Whereas, the citizens of the Town have been actively preparing a celebration to honor this historic occasion, including tours of historic landmarks and a marker dedication ceremony at Bonner Point in honor of John Lawson; and

Whereas, in observance of Bath's tricentennial, the General Assembly has been invited to meet in Bath on March 8, 2005; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the early residents of the Town of Bath for their contributions to their community and the State of North Carolina.

SECTION 2. The General Assembly extends sincere good wishes to the citizens of the Town of Bath on the occasion of the town's 300th anniversary on March 8, 2005, and encourages the citizens of this State to join Bath in demonstrating respect for our history and heritage.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Bath.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 2005.

H.J.R. 627 **Resolution 2005-17**

A JOINT RESOLUTION HONORING THE MEMORY OF DR. WILLA B. PLAYER, WHILE OBSERVING WOMEN'S HISTORY MONTH.

Whereas, women of every race, class, and ethnic background have made contributions to all facets of American life, including government, business, education, law, science, medicine, and the arts; and

Whereas, some notable American women include Madam C. J. Walker (Sarah Breedlove), the first African-American millionaire; Mary Kies, the first woman to receive a patent; Shirley Chisholm, the first African-American woman elected to Congress; Elizabeth Blackwell, the first woman to earn a medical degree; Dr. Sally Ride, the first American woman to travel into space; and Dr. Johnnetta B. Cole, the first African-American to chair the Board of the United Way of America and the fourth female President of Bennett College for Women; and

Whereas, influential women with ties to North Carolina include Penelope Barker, the reputed leader of the 1774 Edenton Tea Party, one of the first political activities in this country staged by women; Mary Jane Patterson, a Raleigh native and the first African-American woman in this country to receive a bachelors degree; Tabitha Ann Holton, the first female to pass the North Carolina State Bar; Dr. Annie Lowrie Alexander, the State's first licensed female doctor; Susie Sharp, the first woman to serve on the North Carolina Supreme Court; Representative Lillian Exum Clement, the first woman elected to serve in the General Assembly; Eva Clayton, the first woman and the first African-American woman to represent North Carolina in Congress; Elizabeth Dole, the first woman to serve as United States Secretary of Transportation and the first woman to represent North Carolina in the United States Senate; Kate Burr Johnson, the first woman in the State to head a major department; Elaine Marshall, the State's first female Secretary of State; Cherie Berry, the State's first female Commissioner of Labor; and Beverly Perdue, the State's first female Lieutenant Governor; and

Whereas, despite the countless contributions women have made and continue to make, their role in history has been consistently inadequate in the teaching and studying of American history; and

Whereas, each year since 1987, the month of March has been designated as Women's History Month to honor, recognize, and celebrate the diverse accomplishments of women; and

Whereas, during Women's History Month it is important to commemorate the women who have helped expand the opportunities of women, such as Dr. Willa B. Player, an educator and civil rights leader; and

Whereas, Willa B. Player was born on August 9, 1909, in Jackson, Mississippi; and

Whereas, Willa B. Player earned an undergraduate degree from Ohio Wesleyan University, a masters degree from Oberlin College, and a doctorate degree from Columbia University; and

Whereas, Willa B. Player was the first African-American woman to serve as a practice teacher in the public schools of Akron, Ohio, in 1929, as President of the National Association of Schools and Colleges of the Methodist Church in 1962, as Trustee of Ohio Wesleyan University, and as President of Bennett College for Women in Greensboro from 1956 to 1966; and

Whereas, Dr. Willa B. Player died on August 27, 2003, knowing that she had made a difference in the lives of countless women across the nation; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Dr. Willa B. Player for her outstanding service to Bennett College for Women.

SECTION 2. The General Assembly urges the citizens of this State to participate in ceremonies and events to commemorate and honor women for their invaluable contributions to our State and nation and to learn more about the significant roles women have had in the creation of our history.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of March, 2005.

S.J.R. 426 **Resolution 2005-18**

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF HOWARD N. LEE TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission due to the resignation of Michael Wilkins; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Howard N. Lee, to serve the remainder of the term expiring June 30, 2009, on the North Carolina Utilities Commission; Now, therefore,

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

SECTION 1. The appointment of Howard N. Lee to the North Carolina Utilities Commission for the remainder of the term expiring June 30, 2009, is confirmed.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of March, 2005.

H.J.R. 520 **Resolution 2005-19**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ASHLEY B. FUTRELL, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Ashley Brown Futrell was born in Rich Square, North Carolina, on October 27, 1911, to Dr. and Mrs. James Thomas Futrell; and

Whereas, Ashley Brown Futrell grew up in the City of Wilson and earned a bachelor's degree from Duke University in 1933; and

Whereas, after graduating from college, Ashley Brown Futrell returned to Wilson, where he taught school, coached at Wilson High School, and later served as a buyer for the Imperial Tobacco Company; and

Whereas, during the mid-1940s, Ashley Brown Futrell took on seasonal work as a reporter for the Wilson Daily Times; and

Whereas, in 1949, Ashley Brown Futrell became the editor and publisher of The Washington Daily News; and

Whereas, Ashley Brown Futrell served as President of both the North Carolina Press Association and the Eastern North Carolina Press Association; and

Whereas, in 1982, Ashley Brown Futrell became editor and publisher emeritus of The Washington Daily News and on April 7, 1991, was inducted into the North Carolina Journalism Hall of Fame; and

Whereas, Ashley Brown Futrell received numerous honors and awards while serving as editor and publisher of The Washington Daily News and was instrumental in the paper winning the Pulitzer Prize for Meritorious Public Service in 1990; and

Whereas, Ashley Brown Futrell served with honor and distinction as a member of the General Assembly, serving three terms in the Senate from 1965 to 1972; and

Whereas, as a State senator, Ashley Brown Futrell supported the establishment of the Brody School of Medicine at East Carolina University in Greenville and he advocated for the founding of Beaufort County Community College; and

Whereas, Ashley Brown Futrell worked unselfishly for the betterment of his community, serving as President of the Greater Washington Chamber of Commerce, Chair of the Board of Trustees of East Carolina University, and as a member of the Washington City Board of Education and the Board of Trustees of the Beaufort County Hospital; and

Whereas, Ashley Brown Futrell was an active member and leader of numerous civic and fraternal organizations, including the Rotary Club, Masons, Shriners, Jaycees, Veterans of Foreign Wars, American Legion, and Moose Lodge; and

Whereas, Ashley Brown Futrell proudly served his country during World War II as a member of the United States Army; and

Whereas, Ashley Brown Futrell was a faithful member of the First United Methodist Church, serving as a lay leader and Sunday schoolteacher; and

Whereas, Ashley Brown Futrell died on February 11, 2005, leaving to mourn his wife, Rachel Brooks Fox Futrell; a son, Ashley Brown Futrell, Jr. and his wife, Susan Futrell; and two grandchildren, Gretchen Suzanne Futrell and Ashley Brown Futrell III; and

Whereas, with the death of Ashley Brown Futrell, the State of North Carolina has lost a most able, outstanding, devoted, and loyal citizen; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Ashley Brown Futrell and expresses the gratitude and appreciation of this State and its citizens for his devoted service to North Carolina.

SECTION 2. The General Assembly extends its sympathy to the family of Ashley Brown Futrell for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Ashley Brown Futrell.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 2005.

S.J.R. 1166 **Resolution 2005-20**

A JOINT RESOLUTION PROVIDING THAT THE 2005 GENERAL ASSEMBLY SHALL MEET IN JOINT SESSION TO HONOR NORTH CAROLINA'S VETERANS WHO HAVE BEEN AWARDED THE MEDAL OF HONOR, DISTINGUISHED SERVICE CROSS, NAVY CROSS, AIR FORCE CROSS, AND SILVER STAR, AND INVITING HIS EXCELLENCY, GOVERNOR MICHAEL F. EASLEY.

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

SECTION 1. On Wednesday, April 6, 2005, at 3:30 P.M., the Senate and the House of Representatives shall meet in joint session in the Hall of the Senate to honor North Carolina's veterans who have been awarded the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, and the Silver Star.

SECTION 2. The Honorable Michael F. Easley, Governor, is invited to the joint session.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 2005.

S.J.R. 161 **Resolution 2005-21**

A JOINT RESOLUTION HONORING THE LIFE AND INFLUENCE OF NORTH CAROLINA MUSICIAN AND SINGER CHARLIE POOLE.

Whereas, Charles Cleveland "Charlie" Poole was born in Randolph County, North Carolina, on March 22, 1892; and

Whereas, Charlie Poole learned to play the banjo at an early age and, after suffering a damaged right hand in a baseball accident, he transcended his injury and developed a unique three-finger banjo picking style that contained the critical elements necessary for the later development of bluegrass music; and

Whereas, like so many of his contemporaries during the early 20th century in the South, Charlie Poole followed the jobs available in the textile industry, and moved to the important textile complex at Spray, North Carolina, now known as Eden, around 1918; and

Whereas, in the mill towns of Spray, Leaksville, and Draper, Charlie Poole discovered a rich musical community, fed in part by the provision of professional music teachers for workers by mill management; and

Whereas, upon arrival in Spray, Charlie Poole met Posey Rorer, an accomplished fiddler, and later, Norman Woodlieff, a guitarist; and

Whereas, this trio of musicians formed an historic musical group named the North Carolina Ramblers; and

Whereas, the North Carolina Ramblers, led by Charlie Poole, journeyed to New York City to make a recording for Columbia Records in June, 1925; and

Whereas, the band's first recording, "Don't Let Your Deal Go Down" sold an astonishing 102,000 copies during the beginnings of the country music record industry; and

Whereas, the North Carolina Ramblers, with later replacement artists Roy Harvey and Lonnie Austin, among others, but always led by Charlie Poole, continued to produce hit recordings until 1930 when the Great Depression began; and

Whereas, Charlie Poole, by developing a unique style of banjo playing, and by incorporating the hard times of his era into his music, and by producing a cohesive band sound that influenced generations of later musicians, became the father of country music, paving the way with his success for later influential artists such as the Carter Family and Jimmie Rodgers; and

Whereas, Charlie Poole's music continues to be enjoyed today by a worldwide audience, thanks to the efforts of Poole biographer Kinney Rorrer and labels like County Records; and

Whereas, Columbia/Legacy, 80 years after his first recording session in July 1925, is releasing a three CD set produced by Henry "Hank" Sapoznik, which will be available for the first time during the 10th Annual Charlie Poole Music Festival in the City of Eden on May 20-21, 2005; and

Whereas, as fellow North Carolinians, we recognize and salute the far-reaching musical influence and genius reflected in the life of Charlie Poole; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Charlie Poole and acknowledges his contributions and influence on country music. The General Assembly further encourages the citizens of this State to participate in activities commemorating the contributions of this extraordinary musician and singer during the Charlie Poole Music Festival, which will be held on May 20-21, 2005, in the City of Eden.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the chair of the Charlie Poole Music Festival.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of April, 2005.

S.J.R. 1167 **Resolution 2005-22**

A JOINT RESOLUTION HONORING NORTH CAROLINA'S VETERANS WHO HAVE BEEN AWARDED THE MEDAL OF HONOR, DISTINGUISHED SERVICE CROSS, NAVY CROSS, AIR FORCE CROSS, OR SILVER STAR, THE NATION'S HIGHEST AWARDS FOR VALOR AND HONORING THE MEMORY OF THE MEN AND WOMEN WHO LOST THEIR LIVES WHILE SERVING IN THE MILITARY.

Whereas, North Carolina is proud to be home to more than 110,000 military personnel and nearly 770,000 veterans of our nation's armed forces; and

Whereas, the State of North Carolina expresses its gratitude to all current and retired military personnel for their service to the United States, especially to those who have made the ultimate sacrifice for the safety and the freedoms of all Americans; and

Whereas, the General Assembly wishes to specifically recognize those North Carolina war veterans who have received the nation's highest honors for bravery; and

Whereas, the Medal of Honor is the nation's highest medal for valor that can be awarded to members of the armed forces; and

Whereas, more than 3,400 Medals of Honor have been awarded since the decoration was created in 1861; and

Whereas, the Distinguished Service Cross was first established in 1918 as the second-highest honor for members of the military, but in later years Congress saw fit to establish awards of similar stature, just beneath the Medal of Honor, for specific branches of the armed forces; and

Whereas, today, the Distinguished Service Cross, the Navy Cross, and the Air Force Cross are our nation's second-highest awards for valor, second only to the Medal of Honor; and

Whereas, today, the Distinguished Service Cross recognizes a person who, while serving in any capacity with the United States Army, distinguishes himself or herself by extraordinary heroism, not justifying the award of a Medal of Honor, while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing or foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; and

Whereas, the Navy Cross, which was first established in 1919 as a medal of lesser importance, was revised by Congress to recognize extraordinary heroism, not justifying the award of a Medal of Honor, by any person, who while serving with the United States Navy, the United States Marine Corps, or the United States Coast Guard while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in conflict against an opposing armed force in which the United States is not a belligerent party; and

Whereas, the Air Force Cross was established in 1960 to recognize extraordinary heroism, not justifying the award of a Medal of Honor, by any person, who while serving with the United States Air Force while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in conflict against an opposing armed force in which the United States is not a belligerent party; and

Whereas, the Silver Star was first established by Congress in 1918 as the Citation Star for United States Army personnel and was later amended so that it may be awarded to any individual – military, civilian, or foreign – who, while serving in any capacity with the armed forces of the United States, distinguishes himself or herself by gallantry in action under any of the following circumstances: (i) against an enemy of the United States; (ii) while engaged in military operations involving conflict with an opposing foreign force; (iii) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; and

Whereas, these aforementioned medals are the nation's highest honors bestowed to members of the military in order to recognize valor and gallantry; and

Whereas, on behalf of the State of North Carolina, the General Assembly wishes to express its profound appreciation to those North Carolinians who have received such prestigious awards for their bravery; Now, therefore,

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

SECTION 1. The General Assembly honors those members of the military who have lost their lives in the defense of the safety and liberty of the people of the United States of America.

SECTION 2. The General Assembly acknowledges and expresses its appreciation and gratitude to those North Carolinians, both living and deceased, who have received the nation's highest medals for their valor and gallantry.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of April, 2005.

S.J.R. 1169 **Resolution 2005-23**

A JOINT RESOLUTION PROVIDING THAT THE 2005 GENERAL ASSEMBLY SHALL MEET IN JOINT SESSION TO HONOR THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL MEN'S BASKETBALL TEAM FOR WINNING THE 2005 NCAA CHAMPIONSHIP.

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

SECTION 1. On Tuesday, April 12, 2005, at 3:30 P.M., the Senate and the House of Representatives shall meet in joint session in the Hall of the Senate to honor the University of North Carolina at Chapel Hill men's basketball team for winning the 2005 National Collegiate Athletic Association Division I Men's Basketball Championship.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of April, 2005.

H.J.R. 1118 **Resolution 2005-24**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JUNE ELIZABETH KAY CAMPBELL, FORMER CIVIL RIGHTS LEADER.

Whereas, June Elizabeth Kay was born on August 19, 1925, in Wilmington, North Carolina, to Dr. John Walcott Kay and Willie Otey Kay; and

Whereas, June Kay moved with her family to the City of Raleigh, where she grew up and graduated from Washington High School in 1944; and

Whereas, June Kay attended Shaw University and later took courses at North Carolina State University; and

Whereas, June Kay married Ralph Campbell on January 1, 1946, and together they had four children; and

Whereas, June Kay Campbell served as an Administrative Secretary at St. Augustine's College for 31 years prior to retiring in 1992; and

Whereas, June Kay Campbell and Ralph Campbell, Sr., became active in the civil rights movement during the 1950s and 1960s, and quickly became influential leaders who were admired and respected by the members of their community; and

Whereas, June Kay Campbell was an ardent supporter of her husband, who served as president of the local chapter of the NAACP and the Raleigh-Wake Citizens Association; and

Whereas, June Kay Campbell provided support and encouragement, along with many home-cooked meals, to area civil rights leaders, often referred to as the Oval Table Gang, who frequently held strategy sessions in the Campbell home around her oval kitchen table; and

Whereas, on September 7, 1960, June Kay Campbell, with courage, confidence, and dignity, escorted her son, Bill, on his first day to school at the formerly all-white Murphey Elementary School, paving the way for the integration of the Raleigh Public School System; and

Whereas, despite malicious taunts and threats of violence, June Kay Campbell walked Bill to school every day for three years; and

Whereas, June Kay Campbell above all was a loving and nurturing mother, who wanted the best for her children and was proud of all of them, including son, Ralph, Jr., who served on the Raleigh City Council from 1985 to 1992 and became the first African-American to be elected to a statewide constitutional office in North Carolina, serving as State Auditor from 1993 to 2005, and son, Bill, who became a lawyer and served two terms as the Mayor of the City of Atlanta from 1994 to 2002; and

Whereas, June Kay Campbell was a faithful member of the St. Ambrose Episcopal Church, where she was a member of the Altar Guild, Absalom Jones Prayer Guild, and the Omega Choir; and

Whereas, June Kay Campbell was a dedicated volunteer for Meals on Wheels and an active member of numerous civic groups, including the Gay Matrons, the Raleigh-Wake Citizens Association (RWCA), Daughters of Isis, the Links, Inc., Jack & Jill of America, Inc., and Chums, Inc.; and

Whereas, June Kay Campbell died on August 19, 2004, at the age of 79; and

Whereas, June Kay Campbell will be fondly remembered for her quiet, unassuming nature, and her undying devotion and love for her family, church, community, and State; and

Whereas, June Kay Campbell was predeceased by her beloved husband, Ralph Campbell, Sr., who died in 1983; but leaves to survive her adored children: Ralph Campbell, Jr., Mildred Campbell Christmas, William C. "Bill" Campbell, and Edwin Campbell, Sr.; and cherished grandchildren: June Christmas, William Campbell, Christina Campbell, Edwin Campbell, Jr., and Rachel Campbell; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of June Elizabeth Kay Campbell and recognizes her contributions and accomplishments in the area of civil rights.

SECTION 2. The General Assembly extends its deepest sympathy to the family and friends of June Elizabeth Kay Campbell for the loss of a beloved family member and friend.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of June Elizabeth Kay Campbell.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of April, 2005.

H.J.R. 1113 **Resolution 2005-25**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES ALLEN "JIM" GRAHAM, FORMER STATE COMMISSIONER OF AGRICULTURE.

Whereas, James Allen "Jim" Graham was born in Rowan County in the Town of Cleveland on April 7, 1921, to James Turner and Laura Blanche Allen Graham; and

Whereas, Jim Graham graduated from Cleveland High School in 1938 and North Carolina State College in 1942 with a Bachelor of Science in Agriculture Education; and

Whereas, Jim Graham married Helen Ida Kirk, on October 30, 1942, and their family later included two daughters, Alice Kirk Graham Underhill and Laura Constance Graham Brooks, and seven grandchildren; and

Whereas, Jim Graham was employed as a teacher of vocational agriculture by the Iredell County Schools from 1942 to 1945; and

Whereas, Jim Graham became Superintendent of the Upper Research Station in 1946 in Laurel Springs, a position he held for six years; and

Whereas, Jim Graham held dual jobs during the period from 1952 to 1957, serving as Manager of the Dixie Classic Fair in Winston-Salem and the first Secretary of the North Carolina Hereford Breeders Association; and

Whereas, Jim Graham became Manager of the Raleigh Farmers Market in 1957 and continued in that position seven years; and

Whereas, Jim Graham was appointed Commissioner of Agriculture on July 19, 1964, by Governor Terry Sanford to fill the unexpired term of the late L.Y. Ballentine; and

Whereas, Jim Graham was elected Commissioner of Agriculture in November of 1964 and reelected eight times, serving nine four-year terms until his retirement in 2000, when he became the longest serving State Commissioner of Agriculture in the nation; and

Whereas, Jim Graham, at the time of his retirement, had served as Commissioner for more than one-third of the entire existence of the Department since its creation in 1876; and

Whereas, it was in this position of leadership that Jim Graham served North Carolina so ably, directing North Carolina's modest farm economy that depended largely on cash income from tobacco and textiles to a highly diversified agribusiness community with receipts exceeding $62 billion annually; and

Whereas, much of the success of agriculture during the last half century in North Carolina is due to the persistent leadership of Jim Graham, whose own formula for success was summarized by a plaque that he proudly kept in his office, "90% Attitude and 10% Ability"; and

Whereas, Jim Graham, during his 58 years in public service served 11 Governors and countless legislators and witnessed an unprecedented growth and prosperity for North Carolina's farm community; and

Whereas, Jim Graham was the recipient of many awards and honors, among them: State 4-H Alumni Award, 1965; National 4-H Alumni Award, 1974; North Carolina Yam Commission Distinguished Service Award; North Carolina Citizens Association Distinguished Service Award, Man of the Year in North Carolina Agriculture, 1969; National Future Farmers of America Distinguished Service Award, 1972; North Carolina Dairy Products Association Distinguished Service Award, 1981; North Carolina Turkey Federal Association, Life Membership for Outstanding Service, 1982; North Carolina Apple Growers Association, Life Membership for Outstanding Service, 1982; North Carolina Cooperative Council Outstanding Service to Rural People Award, 1983; North Carolina Pork Producers Association Special Service Award, 1983; North Carolina Poultry Federation Distinguished Service Award, 1983; North Carolina Quarter Horse Association, Hall of Fame; Martin Litwack Award, North Carolina State University's College of Veterinary Medicine; and North Carolina Pest Control Association Award; and

Whereas, Jim Graham was named "Man of the Year" in January 1979 by Progressive Farmer Magazine; and

Whereas, Jim Graham was chosen as the permanent Class President of the Class of 1942 of North Carolina State University; and

Whereas, Jim Graham was an honorary member of the North Carolina Vocational Agricultural Teachers Association, North Carolina Farm Writers Association, State Future Farmers of America, North Carolina Food Dealers Association, and North Carolina School Food Service Association; and

Whereas, Jim Graham was awarded the Watauga Medal on March 6, 2002, by North Carolina State University's Board of Trustees, administration, and faculty for his many contributions to the University, the State of North Carolina, agriculture, and agribusiness; and

Whereas, Jim Graham received the first Dean's Distinguished Service to Agriculture Award on November 2, 2003, from the College of Agriculture and Life Sciences at North Carolina State University; and

Whereas, among Jim Graham's many achievements was research leading to the eradication of the boll weevil, bovine brucellosis, hog cholera, and pseudorabies in hogs, significant achievements that have led directly to the expansion of cotton and livestock production; and

Whereas, while cotton had reigned as king in North Carolina during the early 1900s, it had declined to an insignificant crop by 1950, due to the boll weevil. With the eradication of the boll weevil during the 1980s, cotton made a dramatic comeback, and by 2000, the State's cotton crop totaled 1.43 million bales, shattering a previous high set in 1926 by 221,000 bales. North Carolina continues today to be free of the boll weevil; and

Whereas, due to the elimination of hog cholera and other animal diseases along with Jim Graham's support of contract farming, the hog inventory increased from just over one million hogs in the early 1940s to over 9.5 million, the greatest expansion occurring since 1991; and

Whereas, during Jim Graham's 36-year tenure as Commissioner of Agriculture, North Carolina farmers saw their cash income increase from $1 billion to $8 billion annually; and

Whereas, North Carolina leads the nation today in the production of flue-cured tobacco, sweet potatoes, and turkeys, is second in the nation in the production of hogs and pigs, Christmas trees, cucumbers for pickles, and farm-raised trout, is third in poultry and egg production, is fourth in bell peppers, broilers, peanuts, greenhouse nursery products, and strawberries, and is fifth in blueberries, burley tobacco, catfish, and snap beans; and

Whereas, as Commissioner of Agriculture, Jim Graham earned the respect of his colleagues and peers throughout North Carolina and the nation for his knowledge, his strength of character, and especially for his great sense of personal integrity; and

Whereas, Jim Graham was a person of indefatigable humor, always seeing the best in others, appreciating the true character of the farmer. Once, meeting a farmer with tobacco juice dripping from both sides of his mouth, Jim Graham commented, "There goes a well-balanced man"; and

Whereas, Jim Graham was a longtime and devoted member of the First Baptist Church in Raleigh, having served in many capacities, including deacon; and he was a loyal member of the Kiwanis Club of Raleigh for many years; and

Whereas, Jim Graham died November 20, 2003, at the age of 82, but his legacy continues with his daughters Alice and husband, Dr. T. Reed Underhill, of New Bern, and Connie and husband, Leslie R. Brooks, of Nashville, Tennessee; and

grandchildren T. Reed Underhill, Jr., Laura Underhill, Graham Underhill, Berry Brooks, Lauren Brooks, Allen Brooks, and Grace Brooks; and

Whereas, Jim Graham will be remembered by all who knew him as a man who loved his job, was devoted to his family, church, community, State, and public service; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of James Allen Graham and expresses the appreciation and gratitude of this State and its citizens for his life and service to the people of North Carolina.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of James Allen Graham.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of April, 2005.

H.J.R. 930 **Resolution 2005-26**

A JOINT RESOLUTION HONORING THE MEMORY OF THE FOUNDERS OF THE TOWN OF GARNER ON THE OCCASION OF THE TOWN'S ONE HUNDREDTH ANNIVERSARY.

Whereas, the Town of Garner was originally known as "Garner's Station" when the Town was chartered by the General Assembly in 1883; and

Whereas, the Town's charter was repealed in 1891, but in 1905, the Town of Garner was reincorporated by the General Assembly; and

Whereas, the Town's first officers were Mayor J.B. Richardson, Aldermen H.D. Rand, J.J. Bagwell, H. Bryan, M.C. Penny, J.S. Buffaloe, and Constable Ernest Jones; and

Whereas, Henry Fort, an African-American cabinetmaker and carpenter, established the Town's first business; and

Whereas, the Town's first bank opened in 1910 with H.D. Rand as president and J.A. Weathers as cashier; and

Whereas, although many of the Town's earliest citizens farmed for a living, some established mercantile stores, drug stores, cotton gins, livery stables, boarding houses, and repair shops; and

Whereas, in 1912, telephone service was provided to 10 subscribers, with Vera Jones operating the switchboard from her home; and

Whereas, Garner has continued to grow and prosper through the continued dedication, insight, and planning of the Town's concerned leaders and citizens; and

Whereas, the year 2005 marks the 100th Anniversary of the Town of Garner; and

Whereas, celebrations of this historic anniversary have been held since July 3, 2004, leading to the grand finale on April 16, 2005; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the founders of the Town of Garner and congratulates the Town on its 100th Anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Garner.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of April, 2005.

H.J.R. 989 **Resolution 2005-27**

A JOINT RESOLUTION HONORING THE FOUNDERS OF HUDSON ON THE TOWN'S 100TH ANNIVERSARY.

Whereas, the area now known as Hudson was settled in the late 1800s by people of Scottish and Scotch-Irish, German, and English descent; and

Whereas, until 1889, the area was known as Hudsonville; and

Whereas, the area was named for two local brothers, Monroe and Johnnie Hudson, who were lumber producers and merchants; and

Whereas, the Sardis Baptist Church, originally organized as the Gunpowder Baptist Church, was established in 1831; and

Whereas, the Lingle School served as Hudson's first school in 1870, and the Mt. View Academy was established in 1893; and

Whereas, during the 1880s, Monroe and Johnnie Hudson operated Hudson's Post Office; and

Whereas, the Town of Hudson was incorporated on March 1, 1905; and

Whereas, the Town's first officers included Mayor E.B. Phillips, and Commissioners John N. Lingle, Barney B. Hayes, P.M. Throneburg, E.T. Hickman, and T.I. Lutz; and

Whereas, a number of lumber and textile industries contributed to the growth of Hudson, including the Hudson Cotton Mill, Throneburg Lumber Company, Caldwell Cotton Mill, and Shuford Mills; and

Whereas, some of Hudson's notable citizens have included R. Barton Hayes, business and civic leader; Jan Karon, novelist; Richard Curtis, journalist; and Bob McRary, professional athlete; and

Whereas, the residents of Hudson have worked to preserve their history, recently converting the former Hudson Elementary School into the Hudson Uptown Building, which serves as a civic center for community activities; and

Whereas, Hudson has an abundance of public parks, which are used by more than 2,000 area children participating in the Town's recreation programs; and

Whereas, Hudson had a population of 300 residents in 1905 and more than 3,000 residents according to the 2000 census; and

Whereas, the year 2005 marks the 100th Anniversary of the Town of Hudson; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

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

SECTION 1. The General Assembly honors the founders of the Town of Hudson for their contributions to North Carolina.

SECTION 2. The General Assembly congratulates the Town of Hudson on its 100th Anniversary and encourages the people of this State to join the citizens of Hudson in celebrating this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Hudson.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 2005.

H.J.R. 1604 **Resolution 2005-28**

A JOINT RESOLUTION PROVIDING THAT THE 2005 GENERAL ASSEMBLY SHALL MEET IN JOINT SESSION TO HONOR WILLIAM HENRY GETTY "BIG BILL" FRANCE, FOUNDER OF THE NATIONAL ASSOCIATION FOR STOCK CAR AUTOMOBILE RACING, CELEBRATE THE NASCAR NEXTEL ALL-STAR CHALLENGE TROPHY TOUR AND THE 2005 NASCAR NEXTEL ALL-STAR CHALLENGE RACE, AND INVITE HIS EXCELLENCY, GOVERNOR MICHAEL F. EASLEY.

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

SECTION 1. On Tuesday, May 10, 2005, at noon, the Senate and the House of Representatives shall meet in joint session in the Hall of the Senate to honor William Henry Getty "Big Bill" France, founder of the National Association for Stock Car Automobile Racing, and celebrate the NASCAR NEXTEL All-Star Challenge Trophy Tour and the 2005 NASCAR NEXTEL All-Star Challenge Race.

SECTION 2. The Honorable Michael F. Easley, Governor, is invited to the joint session.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of May, 2005.

H.J.R. 1605 **Resolution 2005-29**

A JOINT RESOLUTION HONORING THE MEMORY OF WILLIAM "BIG BILL" FRANCE, NASCAR'S FOUNDER, AND ENCOURAGING THE NASCAR ORGANIZATION TO KEEP THE LOWE'S MOTOR SPEEDWAY AS THE SITE OF THE NASCAR NEXTEL ALL-STAR CHALLENGE.

Whereas, William "Big Bill" France was born on September 26, 1909; and

Whereas, Bill France was affectionately known as "Big Bill" among his family and friends; and

Whereas, in 1931, Bill France married North Carolina native Anne B. Bledsoe of the Nathan's Creek Community in Ashe County, and together they had two sons; and

Whereas, in 1934, Bill France and his family moved to Daytona Beach, Florida, where he opened a gas and service station; and

Whereas, Bill France was a stock car race enthusiast and in 1938 promoted the first successful stock car race on Daytona Beach; and

Whereas, Bill France drove in a number of races and in 1940 won the National Stock Car Championship; and

Whereas, in 1947, Bill France founded the National Association for Stock Car Automobile Racing (NASCAR); and

Whereas, in 1949, Bill France established the NASCAR Strictly Stock Division, which later became the NASCAR NEXTEL Cup Series; and

Whereas, in 1972, Bill France retired as the President of NASCAR; and

Whereas, Bill France was recognized as a leader in accelerating the development of metallurgical advances and aerodynamics, vehicle construction, fire-preventing fuel cells and check valves, tire improvement, roll bar construction, highway traffic pattern studies, seat and shoulder harness design, human studies under stress and fatigue, and wheel and brake design; and

Whereas, Bill France died in 1992 as one of the most influential figures in American automobile racing; and

Whereas, the motorsports industry has greatly impacted the economy in North Carolina; and

Whereas, in 2003, the total economic impact of the motorsports industry in North Carolina was $5.1 billion; and

Whereas, the 2005 NASCAR NEXTEL All-Star Challenge will have an estimated $100 million impact in the Charlotte area and North Carolina; and

Whereas, the 2005 NASCAR NEXTEL All-Star Challenge will take place on Saturday, May 21, 2005, at the Lowe's Motor Speedway in Concord; and

Whereas, the NASCAR NEXTEL All-Star Challenge race will include all drivers and car owners who have won races in the preceding and current years, active drivers who have won the NASCAR NEXTEL Cup Series Championship, active drivers who have previously won the NASCAR NEXTEL All-Star Challenge, and the winner of the NEXTEL open; and

Whereas, one driver from among the top 50 in NASCAR NEXTEL Cup Series driver points standing who is not already in the NASCAR NEXTEL All-Star Challenge will also be selected to participate in the race from the votes cast by NASCAR fans; and

Whereas, past All-Star Challenge champions include Matt Kenseth, Ryan Newman, Dale Earnhardt, Jr., Jimmie Johnson, and Rusty Wallace and multiple All-Star Challenge winners Dale Earnhardt, Jeff Gordon, Terry Labonte, and Davey Allison; and

Whereas, in addition to the race, a number of other activities have been planned for this year's All-Star Challenge event, including a trophy tour and pit crew challenge; and

Whereas, the NASCAR NEXTEL All-Star Challenge Trophy Tour will be held May 10 through 19, providing NASCAR fans across the State with the opportunity to view the all-star challenge trophy and show cars, participate in contests, and interact with NASCAR personalities; and

Whereas, the All-Star Challenge Trophy Tour will kick off at the State Capitol in Raleigh, then travel to Camp LeJeune, Wilmington, Fort Bragg, Pope Air Force Base, Kannapolis, Greensboro, Asheville, Mooresville, and Concord before arriving at the Charlotte Coliseum on May 19; and

Whereas, the first NASCAR NEXTEL All-Star Pit Crew Challenge will take place on May 19, 2005, at the Charlotte Coliseum; and

Whereas, during the Pit Crew Challenge individuals and teams will compete in seven head-to-head skills competitions designed to showcase the talents of NASCAR's top crew members and identify the top pit crew specialists and overall pit crew; and

Whereas, the All-Star Challenge has been held for 21 years with the Lowe's Motor Speedway serving as the location of the race for 20 of those years; and

Whereas, the NASCAR organization should keep the All-Star Challenge at the Lowe's Motor Speedway because it is located in the center of the sport with an overwhelming majority of the NASCAR teams and suppliers located within a 100-mile radius of the Charlotte metropolitan area; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of William "Big Bill" France, founder of the National Association for Stock Car Automobile Racing, known as "NASCAR."

SECTION 2. The General Assembly encourages NASCAR to make the Lowe's Motor Speedway the permanent site of the NASCAR NEXTEL All-Star Challenge.

SECTION 3. The General Assembly encourages the citizens of this State to support the 2005 NASCAR NEXTEL All-Star Challenge by attending the activities planned for May 10-21, 2005.

SECTION 4. The Secretary of State shall transmit a certified copy of this resolution to the governing body and officers of NASCAR.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of May, 2005.

S.J.R. 1173 **Resolution 2005-30**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HENRY GARDNER "RED" GIBSON, PATRIOT AND WORLD WAR II VETERAN.

Whereas, Henry Gardner "Red" Gibson was born on May 29, 1921, in Iredell County, to Roy Clifton Gibson and Mary Ellen Webber Gibson; and

Whereas, Red Gibson proudly served his country during World War II as a member of the United States Army; and

Whereas, Red Gibson earned a World War II Victory Medal, Good Conduct Medal, American Defense Medal, American Campaign Medal, Asiatic-Pacific Campaign Medal and Bronze Star Attachment, and an honorable service lapel button; and

Whereas, Red Gibson served as a member of the Merchant Marines from 1949 to 1950; and

Whereas, after serving in the military, Red Gibson moved to the Icard Community in Burke County; and

Whereas, Red Gibson was married on December 7, the anniversary of Pearl Harbor, which was an important date in American history that he never wanted to forget; and

Whereas, Red Gibson tried to resume a normal life, but he was haunted by the horrors he'd experienced during the war and hampered physically because of a head injury he'd suffered in combat; and

Whereas, the continuing nightmares eventually took a toll on his family; and

Whereas, despite his troubles, Red Gibson worked in the local mills, as a plumber and gardener, and in later years, collected cans to support himself and maintain his dignity; and

Whereas, Red Gibson could not afford luxuries, he walked everywhere he went and often got by without basic necessities like electricity and running water, but he never gave up on himself or his country; and

Whereas, Red Gibson normally dressed in military fatigues and carried the American flag as he walked to the bridge near his modest home and stood guard each day for many years; and

Whereas, although Red Gibson was initially ridiculed by many in his community for his unusual rituals, he was eventually embraced by them as a true patriot, particularly after the terrorist attacks on our country on September 11, 2001; and

Whereas, Red Gibson was buoyed by his neighbors when, in an act of solidarity, they stopped laughing and began saluting him out of respect and patriotic pride as they passed him marching on the road and guarding the bridge; and

Whereas, Red Gibson was finally being recognized for his dedication and service to his country when he was brutally murdered in his home on February 5, 2004; and

Whereas, Red Gibson's death saddened the entire Burke County community; and

Whereas, Red Gibson is survived by his daughters, Mary Margaret Gibson Gentry and Betty Sue Gibson Reid; and

Whereas, Red Gibson deserves to be commended for his service and devotion to this country; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Henry Gardner "Red" Gibson and expresses the gratitude and appreciation of the citizens of this State for his service to his country.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Henry Gardner "Red" Gibson for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Henry Gardner "Red" Gibson.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of May, 2005.

H.J.R. 744 **Resolution 2005-31**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF STORYTELLER JACQUELINE CARSON "JACKIE" TORRENCE.

Whereas, Jacqueline Carson "Jackie" Torrence was born on February 12, 1944, in Chicago, Illinois; and

Whereas, Jackie Torrence grew up in Salisbury, North Carolina, and began telling stories to children while working as an assistant at the High Point Library; and

Whereas, Jackie Torrence quickly emerged as a gifted storyteller who enthralled audiences with tales of Br'er Rabbit, giants, ghosts, and ordinary people that were filled with vivid cackles, moans, groans, yowls, howls, neighs, and bays; and

Whereas, Jackie Torrence was in great demand as a storyteller, traveling to at least 47 states and foreign countries, including Great Britain, New Zealand, and Guam; and

Whereas, Jackie Torrence performed at many venues, including the Lincoln Center, the Kennedy Center, Colonial Willamsburg, the National Storytelling Festival, and the International Children's Festival, appeared on CBS Sunday Morning with Charles Kurault, and The David Letterman Show; and was featured in Parade Magazine, the Wall Street Journal, and the New York Times; and

Whereas, Jackie Torrence wrote several books, including "Stories from Around the World – African-American Stories", "Jackie Tales and the Art of Telling Them", and "The Importance of Pot Liquor", and recorded some of her stories for commercial release, including "Tradition: a Potpourri of Tales", "Jump Tales", and "Classic Children's Tales"; and

Whereas, Jackie Torrence won the National Education Association Award and the 1997 Storytelling World Award, and received honors from the American Library Association and the Parent's Choice Foundation and honorary doctorate degrees from Catawba College and Livingstone College; and

Whereas, Jackie Torrence brought a great deal of joy and humor to the lives of countless children and adults with her unique style, melodious voice, and expressive face; and

Whereas, Jackie Torrence was known affectionately as "The Story Lady"; and

Whereas, Jackie Torrence died on November 30, 2004, leaving to mourn, a daughter, Lori Seals, and three grandsons, Boyce Seals, Bishop Norman, and Benjaman Norman; Now, therefore,

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

SECTION 1. The General Assembly honors the extraordinary life and talent of Jacqueline Carson "Jackie" Torrence and expresses its appreciation for the joy she brought to others as a storyteller.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Jacqueline Carson "Jackie" Torrence for the loss of a beloved family member.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of May, 2005.

H.J.R. 852 **Resolution 2005-32**

A JOINT RESOLUTION HONORING THE EARLY RESIDENTS OF THE CITY OF NEWTON ON THE CITY'S ONE HUNDRED FIFTIETH ANNIVERSARY.

Whereas, the City of Newton was incorporated by the General Assembly in 1855; and

Whereas, Newton was named for Newton Wilson, the son of Nathaniel Wilson, former member of the General Assembly who sponsored the bill to create Catawba County; and

Whereas, the City's first commissioners included M.L. McCorkle, S.G. Miller, George Setzer, O. Campbell, and D.B. Gaither; and

Whereas, Newton serves as the county seat of Catawba County; and

Whereas, the citizens of Newton have made significant contributions to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, Newton has continued to grow and prosper through the continued dedication, insight, and planning of the City's concerned leaders and citizens; and

Whereas, plans have been made to celebrate the City's historic anniversary; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the early residents of the City of Newton and congratulates the City on its 150th anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the City of Newton.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of May, 2005.

H.J.R. 774 **Resolution 2005-33**

A JOINT RESOLUTION HONORING THOSE WHO CONTRIBUTED TO THE CONSTRUCTION OF THE DISMAL SWAMP CANAL ON THE TWO HUNDREDTH ANNIVERSARY OF THIS HISTORIC LANDMARK.

Whereas, the Dismal Swamp Canal is a 22-mile waterway that serves as part of the Atlantic Intracoastal Waterway; and

Whereas, the Dismal Swamp Canal is the oldest man-made continuously operating waterway in the country, opening to boating traffic in 1805; and

Whereas, Colonel William Byrd II proposed the Dismal Swamp Canal in 1728 after surveying the boundary between North Carolina and Virginia; and

Whereas, in 1793, slaves and other laborers began the arduous task of digging the canal by hand, completing the work approximately 12 years later; and

Whereas, the Dismal Swamp Canal is a living monument to the sacrifices of the men who built it; and

Whereas, one of those men was Moses Grandy, born into slavery in Camden County around 1786, who after many years of working on the canal was able to purchase his freedom with a portion of his earnings and whose life story was recorded in the 1843 narrative, "The Life of Moses Grandy; Late a Slave in the United States of America;" and

Whereas, today, the Dismal Swamp Canal attracts approximately 2,000 pleasure boats annually; and

Whereas, the Dismal Swamp Canal is listed on the National Register of Historic Places, designated as a National Historic Civil Engineering Landmark and

recognized as part of the National Underground Railroad Network to Freedom Program; and

Whereas, partners in a year-long celebration of the Dismal Swamp Canal's 200th Anniversary are the Dismal Swamp Canal Welcome Center, Dismal Swamp State Park and Natural Area, Great Dismal Swamp National Wildlife Refuge, Virginia Canals and Navigations Society, City of Chesapeake, and Elizabeth City State University; and

Whereas, future plans for the Dismal Swamp Canal include the Dismal Swamp State Park, which will be made possible due to the efforts of the late Dr. Joseph Armstrong Gill, a conservationist and avid outdoorsman, who was instrumental in persuading the State to purchase land in the Great Dismal Swamp for use as a park; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Moses Grandy and the many other laborers who constructed the Dismal Swamp Canal.

SECTION 2. The General Assembly honors the memory of Dr. Joseph Armstrong Gill for his role in helping the creation of the future Dismal Swamp State Park.

SECTION 3. The General Assembly encourages the citizens of this State to take part in activities commemorating the 200th Anniversary of the Dismal Swamp Canal.

SECTION 4. The Secretary of State shall transmit a certified copy of this resolution to the Dismal Swamp Canal Welcome Center.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of May, 2005.

S.J.R. 1170 **Resolution 2005-34**

A JOINT RESOLUTION RECOGNIZING THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL MEN'S BASKETBALL TEAM FOR AN OUTSTANDING SEASON CULMINATING IN THE 2005 NCAA DIVISION I CHAMPIONSHIP.

Whereas, the State of North Carolina is home to many talented people and the place of many firsts and achievements, including the first English settlement in the United States, man's first heavier-than-air powered flight, the first state to vote for independence from Great Britain, the first gold nugget discovered in the United States, the first sit-in to spark the civil rights movement, and a sky that is a particularly beautiful shade of blue; and

Whereas, the University of North Carolina at Chapel Hill is also home to many firsts and achievements, including being established as the first public university in the nation, being rated one of the best public universities in the country, and being acknowledged nationwide for excellence in athletics as well as academics; and

Whereas, the men's basketball program in particular has become one of the most renowned programs in the nation, boasting such talented student-athletes as the 40 players whose jerseys hang in the rafters of the Dean E. Smith Center; and

Whereas, those players include seven former players whose jerseys are retired because they were consensus National Players of the Year – Jack Cobb, George

Glamack, Lennie Rosenbluth, Phil Ford, James Worthy, Michael Jordan, and Antwan Jamison – and 33 other honored jerseys which belong to players who were the most valuable players, the most valuable player of an NCAA championship team, ACC Player of the Year, members of a gold-medal-winning Olympic squad, or first- or second-team All-Americas on a generally recognized team; and

Whereas, on April 4, 2005, the University of North Carolina men's basketball team won the 2005 National Collegiate Athletic Association (NCAA) Division I Championship by defeating the University of Illinois by a score of 75-70; and

Whereas, on the team's road to the final championship game, the Tar Heels defeated the Oakland Golden Grizzlies, Iowa State Cyclones, Villanova Wildcats, Wisconsin Badgers, and the Michigan State Spartans; and

Whereas, the Tar Heels finished the 2004-2005 season with a 33-4 record, including 15-0 at home, and the number 1 ranking in the final USA Today/ESPN Coaches Poll; and

Whereas, the 2005 championship marks the fourth Division I NCAA championship title and fifth overall championship title for the men's basketball program at UNC-CH; and

Whereas, the Tar Heels became the third team in NCAA Division I men's history, and the first team since 1963, to win the NCAA championship and lead the nation in scoring; and

Whereas, the 2005 championship continues the tradition of excellence which began in 1924, when under Coach Norman ("Bo") Shepard, the Tar Heels had an undefeated season and were declared national champions by the Helms Foundation; and which was followed by NCAA Division I championships in 1957 under Coach Frank McGuire, and in 1982 and 1993 under Coach Dean Smith; and

Whereas, this tradition of excellence is further reflected in the Tar Heels' team performance records – for example, 16 Final Four appearances, the most in NCAA history (and more than any other school within a 14-mile radius of Chapel Hill); 1,860 overall wins, second in NCAA history; 24 Atlantic Coast Conference regular-season championships, the most in league history; 15 ACC Tournament titles, tied for the most titles in ACC history; 525 ACC victories, more than any other school in the conference; 88 NCAA tournament wins, second in tournament history; 21 Sweet 16 appearances, second-most in NCAA history, and in numerous individual performance records; and

Whereas, the success of men's basketball at the University of North Carolina at Chapel Hill is a fitting testimonial and memorial to the program's former players and coaches, including Hall of Fame member and former Head Coach Frank McGuire, who guided the 32-0 Tar Heels to win the national championship title in 1957; and

Whereas, the Tar Heels' tradition of success is further exemplified by the many banners hanging in the Dean E. Smith Center reflecting past accomplishments; by the many honors, awards, and other recognitions received; and by the loyalty and support of countless Tar Heel fans in our State and across the world; and

Whereas, Carolina has graduated more than 95 percent of men's basketball lettermen over the past 40-plus years and had the highest academic index of the 65 teams in the 2005 NCAA Tournament; and

Whereas, the 2005 championship is the first NCAA title for Roy Williams, an Asheville, North Carolina, native and a UNC-Chapel Hill alumnus, who is in just his second year as head coach of the Tar Heels; and

Whereas, Roy Williams served as an assistant coach at UNC-CH under the legendary Dean Smith and played freshman basketball under Coach Bill Guthridge and,

in his 17 years as a college basketball head coach, has led his teams to 16 tournament appearances, five Final Fours, and three NCAA title games; and

Whereas, Roy Williams, with a career record of 470-116 as a head coach, has the best winning percentage of any active coach in men's college basketball with at least 10 years' experience and the fifth-best in history; and

Whereas, Roy Williams has earned National Coach of the Year honors four times and in 2003 received the John R. Wooden Legends of Coaching Award; and

Whereas, under Roy Williams' leadership, the members of the men's basketball team are positive role models who have achieved great success both on and off the court; and

Whereas, UNC-CH seniors Jawad Williams, Jackie Manuel, Melvin Scott, Charlie Everett, and C.J. Hooker are ending their four years at UNC-CH with the 2005 championship; and

Whereas, junior Sean May, who scored 26 points and grabbed 10 rebounds in the final game, was named Most Outstanding Player of the tournament; and

Whereas, Sean May was joined by juniors Raymond Felton and Rashad McCants on the All-Tournament Team; and

Whereas, freshman Marvin Williams was named the Associated Press Rookie of the Year in the ACC; and

Whereas, the entire men's basketball team deserves congratulations and appreciation for an outstanding season and for their heart and their hustle in winning the 2005 NCAA championship; and

Whereas, the Tar Heels' perseverance, teamwork, and ensuing triumph have brought great honor and distinction to the State; and

Whereas, the success of this team reflects a tradition of basketball excellence in our State that is valued by so many North Carolinians and is deserving of recognition and appreciation for bringing great honor and distinction to our State; Now, therefore,

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

SECTION 1. The General Assembly recognizes and appreciates the outstanding achievements of the men's basketball program at the University of North Carolina at Chapel Hill. The General Assembly expresses the appreciation and admiration of the people of North Carolina to the men's basketball team at the University of North Carolina at Chapel Hill for winning the 2005 National Collegiate Athletic Association Division I Championship.

SECTION 2. The General Assembly honors the memory of Frank McGuire and extends the appreciation of the citizens of this State to former head coaches Dean Smith, Bill Guthridge, and Matt Doherty for their service to the men's basketball program at the University of North Carolina at Chapel Hill.

SECTION 3. The North Carolina General Assembly expresses the extreme appreciation and admiration of the people of North Carolina to the University of North Carolina at Chapel Hill Men's Basketball Team for winning the 2005 National Collegiate Athletic Association Division I Men's Basketball Championship and especially recognizes the achievements of the 2005 team members: Student-athletes Charlie Everett, Raymond Felton, Brooks Foster, Damion Grant, Jesse Holley, C.J. Hooker, Jackie Manuel, Sean May, Rashad McCants, Wes Miller, David Noel, Byron Sanders, Melvin Scott, Reyshawn Terry, Quentin Thomas, Jawad Williams, and Marvin Williams; coaches and staff Roy Williams, Joe Holladay, Steve Robinson, C.B. McGrath, Jerod Haase, Jonas Sahratian, Eric Hoots, Marc Davis, and Wayne Walden;

and student managers David Hoots, Russ Lauten, Preston Puckett, Bradley Vanhoy, Zane Hendrix, and Kathryn Howlett.

SECTION 4. The Secretary of State shall send certified copies of this resolution to Head Coach Roy Williams; the team members, coaches, staff, and managers honored in this resolution; Athletic Director Dick Baddour, and Chancellor James Moeser on behalf of the University community.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 2005.

H.J.R. 1609 **Resolution 2005-35**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM "BILL" SETH HIATT, FORMER COMMISSIONER OF THE NORTH CAROLINA DEPARTMENT OF MOTOR VEHICLES AND FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, William "Bill" Seth Hiatt was born in Surry County on February 15, 1932, to David Lafayette and Ethel Puckett Hiatt; and

Whereas, Bill Hiatt graduated from Flat Rock High School in Surry County in 1949; and

Whereas, Bill Hiatt worked his way through Brigham Young University beginning when he was only 16 and graduated in 1953 with a BS Degree in Physical Education; and

Whereas, Bill Hiatt served as a Private First Class in the United States Army from 1953 to 1955 where he received a National Defense Service Medal and a Good Conduct Medal; and

Whereas, Bill Hiatt was released from active duty in 1955 and transferred to the Army Reserve to complete eight years of service under the Universal Military Training and Service Act; and

Whereas, in 1955, Bill Hiatt began working for the Surry County Schools as a teacher and coach of several sports; and

Whereas, Bill Hiatt founded Hiatt & Mason Enterprises, a construction company specializing in large-scale commercial projects, including bridges and sewage treatment plants; and

Whereas, Bill Hiatt served as Commissioner for the Department of Motor Vehicles (DMV) and Chair of the National DMV Committee from 1985 through 1990; and

Whereas, as a result of his outstanding service as Commissioner of DMV, Bill Hiatt received the distinguished award of "ROAD GANG MEMBER" by the North Carolina Department of Transportation; and

Whereas, Bill Hiatt served with honor and distinction in the North Carolina House of Representatives for six terms during the 1973, 1981, 1995, 1997, 1999, and 2001 Sessions of the General Assembly; and

Whereas, during the 12 years he served in the House of Representatives, Bill Hiatt made contributions as a member of numerous committees and commissions, including Appropriations, Business and Labor, Commerce, Education, Election Laws and Campaign Finance Reform, Legislative Redistricting, Local Government, Public

Employees, Military, Veterans and Indian Affairs, Public Health, Transportation, Travel and Tourism, and Wildlife; and

Whereas, Bill Hiatt was a devoted advocate for education who strived to improve the quality of education in North Carolina and ardently supported increasing the salaries of teachers and State employees; and

Whereas, Bill Hiatt is probably best known for introducing a bill on the Handicapped Ramp Law; and

Whereas, Bill Hiatt's other political endeavors included running in the Republican primary for the Office of Lieutenant Governor in 1976 and 1984; and

Whereas, during his many years of service to the State of North Carolina as a teacher, coach, DMV Commissioner, and legislator, Bill Hiatt received numerous awards and certificates of appreciation but particularly noteworthy was the "Order of the Long Leaf Pine" presented to him by Governor James B. Martin; and

Whereas, Bill Hiatt was active in his community and served as an elder in the Church of Jesus Christ of Latter Day Saints, of which he was a lifelong member; and

Whereas, Bill Hiatt died on September 7, 2004, at the age of 72; and

Whereas, Bill Hiatt is survived by his wife, Rita; daughters, Shelia, Gina, Melody, Chrystal, and Ashley; and 11 grandchildren; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of William "Bill" Seth Hiatt and expresses the appreciation of the citizens of this State for the service he rendered.

SECTION 2. The General Assembly extends its deepest sympathy to the family of William "Bill" Seth Hiatt for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of William "Bill" Seth Hiatt.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 2005.

H.J.R. 1579 **Resolution 2005-36**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CLARENCE E. "BIG HOUSE" GAINES, SR., LEGENDARY BASKETBALL COACH.

Whereas, Clarence E. Gaines was born on May 21, 1923, in Paducah, Kentucky, to Lester and Olivia Bolen Gaines; and

Whereas, Clarence E. Gaines attended the Paducah public schools and graduated in 1941 as class salutatorian of Lincoln High School; and

Whereas, Clarence E. Gaines enrolled at Morgan State University in Baltimore, Maryland, where he was an All-American football player and a member of the basketball and track teams; and

Whereas, in college, Clarence E. Gaines was given the nickname "Big House" because of his height and size; and

Whereas, Clarence E. Gaines graduated from Morgan State University in 1945, with a degree in chemistry and took a temporary position with Winston-Salem Teachers' College (now Winston-Salem State University) as an assistant coach; and

Whereas, in 1946, Coach Gaines was not only teaching at the university but was also serving as the head football and basketball coach; and

Whereas, in 1948, Coach Gaines was named the Central Intercollegiate Athletic Association (CIAA) Football Coach of the Year after leading the football team to an 8-1 season; and

Whereas, in 1949, Coach Gaines began coaching only basketball and serving as the university's athletic director; and

Whereas, despite the demands of coaching and teaching, Coach Gaines made the time to continue his own education and earned a masters degree in Physical Education from Columbia University in 1950; and

Whereas, in 1967, Coach Gaines achieved one of the many high points in his career when his team, led by Vernon Earl "The Pearl" Monroe, compiled a regular season record of 31-1, and won the NCAA Division II basketball title, the first for a historically black university; and

Whereas, that same year, Coach Gaines was named the NCAA Division II Coach of the Year, the first black coach to earn the honor; and

Whereas, Coach Gaines had an exceptional career as a basketball coach, leading his WSSU teams to 20 or more wins 18 times and winning 11 CIAA championships; and

Whereas, after 47 years of devotion and commitment to the Athletic Department at Winston-Salem State University and to his students, Coach Gaines retired in 1993 with an outstanding record of 828-446, making him at the time the second winningest coach in NCAA history; and

Whereas, Coach Gaines was named the CIAA Basketball Coach of the Year in 1957, 1961, 1963, 1970, 1975, and 1980 and the CIAA Outstanding Tournament Coach in 1953, 1957, 1960, 1961, 1963, 1966, 1970, and 1977; and

Whereas, Coach Gaines' accomplishments earned him numerous awards and recognitions, including the National Association of Basketball Coaches/Metropolitan Intercollegiate Basketball Association/National Intercollegiate Tournament (NABC/MIBA/NIT) Award in 1978, Indiana Sports Foundation Lifetime Achievement Award in 1990, and Order of the Long Leaf Pine; and

Whereas, Coach Gaines was inducted into several Halls of Fame, including the National Association of Intercollegiate Athletics (NAIA) Helms Hall of Fame (1968), CIAA Sports Hall of Fame (1976), the North Carolina Sports Hall of Fame (1978), and the Naismith Memorial Basketball Hall of Fame (1982); and

Whereas, some of Coach Gaines' other achievements include serving as cofounder of the Winston-Salem Youth Baseball League in 1960; CIAA President from 1970 to 1974; CIAA Basketball Coaches Association President from 1972 to 1976; member of the U.S. Olympic Committee from 1973 to 1976; member of the Board of Directors of the Naismith Memorial Basketball Hall of Fame from 1980 to 1990; National Association of Basketball Coaches (NABC) President in 1989; and founder and administrator of the Winston-Salem State University National Youth Sports Program; and

Whereas, Coach Gaines was deeply concerned for his fellow man and was active in a number of civic and fraternal organizations, including the St. Paul United Methodist Church, Meals on Wheels, Rotary Club of Winston-Salem, Old Hickory Council of the Boy Scouts of America, and the Omega Psi Phi and Sigma Pi Phi Boule Fraternities; and

Whereas, Coach Gaines published his autobiography entitled "They Call Me Big House" in 2004; and

Whereas, Coach Gaines died on April 18, 2005, at the age of 81; and

Whereas, Coach Gaines is survived by his wife of 54 years, Clara Berry Gaines; a daughter, Lisa Gaines McDonald; a son, Clarence E. Gaines Jr.; four grandchildren, Loran G. McDonald, Ryan McDonald, Olivia Rose Gaines, and Garrett Christian Gaines; and

Whereas, Clarence E. "Big House" Gaines, Sr. was a talented coach, dedicated teacher, and concerned citizen who deserves to be recognized for his many contributions; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Clarence E. "Big House" Gaines, Sr. and acknowledges the impact he had on the game of basketball, his student players, and Winston-Salem State University.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Clarence E. "Big House" Gaines, Sr. for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Clarence E. "Big House" Gaines, Sr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 2005.

H.J.R. 578 **Resolution 2005-37**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF REVEREND SHERLEY W. EDWARDS OF POTECASI, NORTH CAROLINA, A CIVIL RIGHTS ADVOCATE AND ARDENT SUPPORTER OF EDUCATION.

Whereas, Sherley W. Edwards was born on March 13, 1913, in Potecasi, North Carolina, the eighth child of Thomas and Laura Jane Edwards; and

Whereas, Sherley W. Edwards was educated at the Potecasi Graded School and later the Rich Square Training School before enrolling at the Tuskegee Institute in Tuskegee, Alabama; and

Whereas, Sherley W. Edwards married Margaret Peele in 1941, and this union produced four children; and

Whereas, Sherley W. Edwards, eager to complete the education he began years earlier, enrolled at Shaw University in 1954 and graduated in 1959 with a degree in sociology and religion; and

Whereas, Sherley W. Edwards faithfully served as pastor of the Second Baptist Potecasi Church in Potecasi, North Carolina, and New Haven Baptist Church in Murfreesboro, North Carolina, for 40 years; and

Whereas, Sherley W. Edwards also served as pastor of other churches in northeastern North Carolina, including Sandy Branch Church in Roxobel, Jordan Grove Baptist Church in Winton, and Jordan Hill Baptist Church in Macon; and

Whereas, Sherley W. Edwards, an early advocate for civil rights for African-Americans, worked tirelessly along with several others, including former House of Representatives member Reverend C.M. Creecy, to end the split school year for

African-American children in Northampton County, and later served as President of the Northampton County NAACP; and

Whereas, Sherley W. Edwards strongly believed that a quality education was the path to success and made it part of his life's mission to encourage young people in his churches and his community to stay in school and maintain good grades; and

Whereas, Sherley W. Edwards founded the Northampton County Ministers Council for Education in 1983 to serve as a community resource for the county's public schools by helping to identify potential dropouts, offering support to students who were failing, and promoting student achievement; and

Whereas, Sherley W. Edwards served as a member of many civic and religious organizations, including the Northampton County Parents and Teachers Association, Farmers and Homemakers Association of Northampton County, the Northampton County NAACP, the Northampton County Baptist Association, and the Northampton County Ministers Council; and

Whereas, Sherley W. Edwards received many awards and recognitions for his good works and dedication, including the Northampton County NAACP Award in 1987; the Migrant Mission Ministry Award in 1995; the Richard Allen Ebony Excellence Award in 1997; the Fayetteville State University Award of Excellence in 1998; and the Dr. Martin Luther King Humanitarian Award in 2004; and

Whereas, Sherley W. Edwards died on July 21, 2004; and

Whereas, Sherley W. Edwards was a devoted husband to his beloved wife, Margaret Peele Edwards, who predeceased him on September 6, 1993; a loving father to his four children, Wendell Edwards, Blanche Edwards, Thomas Edwards, and Elnora Massey; six grandchildren; and four great-grandchildren; Now, therefore,

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

SECTION 1. The General Assembly honors the life of Reverend Sherley W. Edwards and acknowledges his lifelong service to the citizens of northeastern North Carolina.

SECTION 2. The General Assembly extends sympathy to the family of Reverend Sherley W. Edwards for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a copy of this resolution to the family of Reverend Sherley W. Edwards.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

H.J.R. 1582 **Resolution 2005-38**

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF DR. ROBERT K. KOGER TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, when the term of Richard Conder expires; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Dr. Robert K. Koger, to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

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

SECTION 1. The appointment of Dr. Robert K. Koger to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 2005.

S.J.R. 1172 **Resolution 2005-39**

A JOINT RESOLUTION FOR THE CONFIRMATION OF THE REAPPOINTMENT OF ROBERT V. OWENS, JR. TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2005, by expiration of term; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Robert V. Owens, Jr. to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2005, and expire June 30, 2013; Now, therefore,

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

SECTION 1. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term to begin July 1, 2005, and expire June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

H.J.R. 198 **Resolution 2005-40**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF MILTON F. FITCH, SR., AND CORA WHITTED FITCH, DISTINGUISHED CITIZENS AND CIVIL RIGHTS ACTIVISTS.

Whereas, Milton F. Fitch, Sr., of New Haven, Connecticut, and Cora Jordan Whitted of Wilson, North Carolina, were married in 1941; and

Whereas, Milton Fitch served nearly five years in the United States Army, earning several medals and three battle stars and distinguishing himself during World War II by contributing to the success of the Red Ball Express, a massive convoy system that delivered supplies to the Allied troops at the war front in Europe; and

Whereas, after the war, Milton and Cora Fitch settled in the City of Wilson where he became a postal worker and she became a schoolteacher; and

Whereas, Milton and Cora Fitch were married for 47 years and were the loving parents of five children; and

Whereas, Milton and Cora Fitch stressed the importance of education in their household and were proud that Jerome and Christine earned doctorate degrees, Milton, Jr., and Patricia received law degrees, and Ernestine obtained a medical degree; and

Whereas, Milton and Cora Fitch became strong advocates for civil rights and frequently took action without regard to their own personal safety to improve the unjust and inequitable conditions faced by African-Americans in their community; and

Whereas, Milton Fitch won a lawsuit against the federal government to become the first African-American letter carrier in the City of Wilson since Reconstruction and helped to initiate a lawsuit against Wilson County over the county's voting patterns, a case that was argued before the United States Supreme Court and led to the county's adoption of a ward system of representation; and

Whereas, Milton Fitch was instrumental in securing burial space for poor veterans in the Rest Haven Cemetery and played a key role convincing the Wilson County government to remove a plaque on the courthouse that listed the county's World War II dead by race; and

Whereas, Cora Fitch organized the first African-American Girl Scout troop in Wilson and was elected to the Wilson County Board of County Commissioners in 1986; and

Whereas, Milton and Cora Fitch also made significant contributions to their community through their involvement in numerous social, fraternal, and civic organizations; and

Whereas, Milton Fitch served as the North Carolina Coordinator for the Southern Christian Leadership Conference, a role which caused him to participate in activities throughout the South, was active in the NAACP, and worked on the campaigns of candidates seeking national and statewide offices; and

Whereas, Milton Fitch was a 33rd degree Mason and on October 7, 1995, was elected Most Worshipful Grand Master of the Prince Hall Masons, Jurisdiction of North Carolina, an honor bestowed upon him for his many years of commitment and dedication to the Masons; and

Whereas, Milton Fitch held a number of other positions as a Mason and was associated with many lodges, including Mizpah Temple #66 and C.A. Whitehead Consistory #188; and

Whereas, Cora Fitch served on the boards of the Wilson County Department of Social Services and the Wilson County Library and was a founding member of the Wilson Alumnae Chapter of Delta Sigma Theta Sorority, Inc., an organization that boasts more than 200,000 members across the country and more than 150 chapters in the South Atlantic Region; and

Whereas, Cora Fitch was active in the Jackson Chapel First Baptist Church, serving as Minister of Music and Youth Choir Director; and

Whereas, Milton and Cora Fitch were especially proud that their son, Milton F. 'Toby' Fitch, Jr., served approximately 19 years in the North Carolina House of Representatives and was a majority leader, and their daughter, Dr. Christine Fitch, serves on the Wilson County Board of Education and has done so for a number of years; and

Whereas, Cora Fitch died on August 7, 1987, and Milton Fitch died on November 2, 1995; Now, therefore,

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

SECTION 1. The General Assembly expresses its deep appreciation for the lives, accomplishments, and courage of Milton F. Fitch, Sr., and Cora Whitted Fitch, and for the service they rendered to the citizens in their community, the State of North Carolina, and the nation.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Milton F. Fitch, Sr., and Cora Whitted Fitch.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 2005.

S.J.R. 305 **Resolution 2005-41**

A JOINT RESOLUTION HONORING THE MEMORY OF THE FOUNDERS OF SIGMA GAMMA RHO SORORITY, INC.

Whereas, Sigma Gamma Rho Sorority was founded on November 12, 1922, in Indianapolis, Indiana, by seven schoolteachers; and

Whereas, the founders of the sorority were Mary Lou Allison Little, Dorothy Hanley Whiteside, Vivian White Marbury, Nannie Mae Gahn Johnson, Hattie Mae Dulin Redford, Bessie M. Downey Martin, and Cubena McClure; and

Whereas, the organization became an incorporated national collegiate sorority on December 30, 1929, when a charter was granted to the Alpha chapter at Butler University; and

Whereas, Sigma Gamma Rho Sorority, Inc., is a national service organization, which addresses concerns that impact society educationally, civically, and economically; and

Whereas, the women of Sigma Gamma Rho Sorority, Inc., are actively involved in public service, leadership development, and youth education and believe in enhancing the quality of life within their communities; and

Whereas, Sigma Gamma Rho Sorority, Inc., has more than 85,000 members worldwide; and

Whereas, some of Sigma Gamma Rho Sorority, Inc.'s national programs include: the National Education Fund, which provides scholarships to needy students regardless of gender or race and conducts educational programs to enhance the quality of life; Program for Africa, which assists African women with equipment for producing grain and other food grown in Africa; Project Wee Savers, a program which provides participants ranging from ages six to 18 years with real life skills involving finances; Operation BigBookBag, which provides children with school supplies, textbooks, resource aides, and other items for school; and Sigma Youth Symposium, which is conducted each year to address youth issues; and

Whereas, Sigma Gamma Rho Sorority, Inc.'s international corporate headquarters is located in Cary, North Carolina; and

Whereas, for more than 80 years, Sigma Gamma Rho Sorority, Inc., has upheld its motto of "Greater Service, Greater Progress"; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Mary Lou Allison Little, Dorothy Hanley Whiteside, Vivian White Marbury, Nannie Mae Gahn Johnson, Hattie Mae Dulin Redford, Bessie M. Downey Martin, and Cubena McClure, founders of Sigma Gamma Rho Sorority, Inc., and acknowledges the women of Sigma Gamma Rho Sorority, Inc., for their commitment to improving the lives of those in their communities.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Grand Basileus of Sigma Gamma Rho Sorority, Inc., at the sorority's international corporate headquarters.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 2005.

S.J.R. 1164 **Resolution 2005-42**

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF TABOR CITY ON THE OCCASION OF THE TOWN'S ONE HUNDREDTH ANNIVERSARY.

Whereas, the Town of Tabor City was first known as "Tabor" when it was incorporated by the General Assembly on February 5, 1905, but in 1935, the name of the Town was changed to Tabor City; and

Whereas, the Town was named for Mount Tabor Baptist Church, which was organized in the area around 1840; and

Whereas, the first officers of the Town were Mayor Condary W. Brown and Commissioners L.M. Stephens, D.L. Harrelson, and W.C. Graham; and

Whereas, Condary W. Brown also served as the Town's first postmaster; and

Whereas, in its early years, due in part to the expansion of the railroad, Tabor City's industry and economy prospered; and

Whereas, in 1889, Charles H. Inman and Jasper Inman established the area's first mercantile store, which specialized in dry goods and groceries; and

Whereas, in 1905, Jesse Lewis established Enterprise Grocery, which became the Town's first brick building; and

Whereas, by 1909, a number of businesses had settled in the area, including a turpentine mill, tobacco warehouse, livery stable, and a hotel; and

Whereas, in 1910, the Bank of Tabor, Harrelson's Pharmacy, and a strawberry crate factory opened for business; and

Whereas, during the 1920s, a number of merchants opened businesses in the Town, including Charlie C. Soles, who established the C.C. Soles Company, a general merchandise business that sold groceries, furniture, hardware, and other necessities and was later named C.C. Soles and Sons, when sons, Wallace Soles and Robert C. Soles joined the business; and

Whereas, during the 1930s and 1940s, dairy, produce, and lumber products contributed to the Town's economic prosperity; and

Whereas, during the 1950s, Tabor City was known as the Yam Capital of the World; and

Whereas, from the 1960s through the 1990s, tobacco production was the most important industry in Tabor City; and

Whereas, today, more than 2,500 citizens make Tabor City their home; and

Whereas, for 100 years, Tabor City has made significant contributions to the social, cultural, and economic prosperity of the State of North Carolina; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the founders of the Town of Tabor City for the contributions they made to the development of the Town.

SECTION 2. The General Assembly congratulates the Town of Tabor City on its 100th anniversary and encourages the citizens of this State to join the Town in celebrating this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Tabor City.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 2005.

S.J.R. 1178 **Resolution 2005-43**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF FRANK HOWE MCDUFFIE, SR., AND SAMMIE SELLERS MCDUFFIE, NORTH CAROLINA EDUCATORS, HUMANITARIANS, COACHES, CIVIL RIGHTS LEADERS, AND RECOGNIZING THE ESTABLISHMENT AND WORK OF THE LAURINBURG NORMAL AND INDUSTRIAL INSTITUTE, INC.

Whereas, on September 15, 1904, Emmanuel M. McDuffie and his wife, Tinny Etheridge McDuffie, came from Alabama to Laurinburg, North Carolina, responding to the call of Dr. Booker T. Washington of the Tuskegee Institute and William Edwards of the Snow Hill Institute to help to provide "suitable education and training in the common pursuits of life for the black people of the area"; and

Whereas, on September 15, 1906, Emmanuel M. McDuffie, J. H. Davis, and Robert Leach incorporated the Laurinburg Normal and Industrial Institute at Laurinburg, North Carolina, for "the instruction of colored teachers and youth in the various common, academic, and collegiate branches, the best methods of teaching the same, and the best methods of theoretical and practical industry in their application to agriculture and the mechanics arts"; and

Whereas, upon the death of the Emmanuel M. McDuffie, Sr., his son Dr. Frank H. McDuffie, Sr., became the President of the Laurinburg Institute and his wife, Sammie Sellers McDuffie, its Principal, and together they built a new campus, integrated the faculty and student body, developed its foreign student program, and built and coached a worldwide recognized athletic and music program; and

Whereas, Frank and Sammie McDuffie were the recipients of the Order of the Long Leaf Pine and various other awards and accolades; and

Whereas, some of the alumni of the Laurinburg Institute alumni played pivotal roles in integrating athletic teams and the university systems of the South, including Charlie Scott who played basketball at the University of North Carolina at Chapel Hill and John Russell who served as a referee; and

Whereas, the Laurinburg Institute provided total secondary educational facilities to black boys and girls in Scotland County for more than 50 years; and

Whereas, the Laurinburg Institute provides its students with special training in numerous technical fields as well as providing and nurturing thousands to "Work hard, stand up, be somebody, be the best"; and

Whereas, Frank and Sammie McDuffie and the Laurinburg Institute have provided invaluable services to the people of the area, as well as educational services to black people from the State, the region, and foreign countries; and

Whereas, the Laurinburg Institute could not have survived and developed without the vision, dedication, and devotion of Frank and Sammie McDuffie; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Dr. Frank H. McDuffie, Sr., and Sammie Sellers McDuffie for the service they rendered and recognizes and expresses its profound appreciation for their contributions to Eastern North Carolina and the State of North Carolina.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Dr. Frank H. McDuffie and Sammie Sellers McDuffie.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 2005.

H.J.R. 933 **Resolution 2005-44**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CAROLYN AND DOROTHY MCNAIRY, FORMER EDUCATORS.

Whereas, Carolyn and Dorothy McNairy, sisters from Guilford County, made lasting and outstanding contributions in their roles as teachers and principals in the Guilford County Public Schools; and

Whereas, Carolyn McNairy graduated from the University of North Carolina at Greensboro in 1925, and earned a masters degree from Columbia University in 1932; and

Whereas, Carolyn McNairy was an educator in the Guilford County Public Schools from 1925 to 1970, serving as a teacher for 18 years and Principal of the Irving Park School for 27 years; and

Whereas, Carolyn McNairy was active in a number of professional organizations, serving as President of the Greensboro School Principals and the local unit of the Association for Childhood Education; and

Whereas, Carolyn McNairy made contributions as a leader of various civic and fraternal groups, serving as President of the Ex Libris Club, the Pedagogue Garden Club, and the Alpha Chapter of Delta Kappa Gamma, and as Vice President of the Soroptimist Club; and

Whereas, Carolyn McNairy was a member of the University of North Carolina at Greensboro Alumni Association Board of Trustees and was involved with the University's Alumni House Committee; and

Whereas, Dorothy McNairy graduated from the University of North Carolina at Greensboro in 1927, and earned a masters degree from Columbia University in 1933; and

Whereas, Dorothy McNairy was an educator in the Guilford County Public Schools from 1927 to 1972, serving as a teacher for 29 years at Greensboro Senior High School (now Grimsley High School) and as Principal of General Greene Elementary School for 16 years; and

Whereas, Dorothy McNairy was a member of the Alpha Chapter of Delta Kappa Gamma and served as President of the North Carolina Delta Kappa Gamma Society, the local chapter of the North Carolina Association of Educators, Ex Libris Club, and the Pedagogue Garden Club; and

Whereas, Dorothy McNairy was a dedicated alumna of the University of North Carolina at Greensboro, serving on the Board of the Alumni Association; and

Whereas, upon her retirement, Dorothy McNairy was named teacher emeritus of the Greensboro Public Schools; and

Whereas, Carolyn and Dorothy McNairy were honored by the University of North Carolina at Greensboro when a scholarship was created in their names; and

Whereas, Dorothy McNairy died on January 25, 2002, at the age of 94 and Carolyn McNairy died on December 31, 2004, at the age of 99; and

Whereas, Carolyn and Dorothy McNairy are survived by several nieces and nephews, including James D. McNairy, Robert P. McNairy, Samuel W. McNairy, Frances McNairy Wilkins, Mary McNairy Lamb, Wyatt H. McNairy, Charles L. McNairy, and Margaret McNairy Luebke; and

Whereas, it is only fitting to recognize the contributions of Carolyn and Dorothy McNairy for their many years of dedication to the field of education; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of Carolyn and Dorothy McNairy for their unselfish dedication in educating North Carolina's youth.

SECTION 2. The General Assembly expresses its deepest sympathy to the family of Carolyn and Dorothy McNairy for the loss of two beloved family members.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Carolyn and Dorothy McNairy.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of August, 2005.

H.J.R. 1789 **Resolution 2005-45**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES BRANTLEY LAMBETH, JR., FORMER CHAPLAIN OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES.

Whereas, James Brantley "Jim" Lambeth, Jr. was born on August 8, 1945, to James B. Lambeth, Sr. and Margaret Lambeth in Winston-Salem, North Carolina; and

Whereas, Jim Lambeth earned a bachelors degree in economics from North Carolina State University in 1967; and

Whereas, Jim Lambeth served in the office of the Comptroller of the Currency in Richmond, Virginia, from 1967 to 1980; and

Whereas, Jim Lambeth earned a Master's of Divinity from Union Theological Seminary in Richmond, Virginia, in 1983; and

Whereas, Reverend Lambeth provided spiritual guidance to congregations in North Carolina and Virginia, serving as Pastor of the Westminster Presbyterian Church in Whiteville, North Carolina, from 1983 to 1988, East Presbyterian Church in Charlotte, North Carolina, from 1988 to 1994, Franklin Presbyterian Church in Franklin, Virginia, from 1994 to 2002, and Western Boulevard Presbyterian Church in Raleigh, North Carolina, from 2002 to 2003; and

Whereas, Reverend Lambeth served as Chaplain of the Columbus County Hospice from 1986 to 1988, Personal Touch Hospice from 1997 to 1999, and the North Carolina House of Representatives in 2003; and

Whereas, Reverend Lambeth's concern and compassion for those less fortunate was evidenced by his service in a number of organizations, including the Caring Program for Children, a well-care insurance program for at-risk children in North Carolina; Franklin Cooperative Ministry, an outreach program that provided food, clothing, and financial assistance to area residents; Kuwayes, a support group for Presbyterian Homes and Family Services; Racial Harmony Network; and North Carolina Hunger Network; and

Whereas, Reverend Lambeth was active in the Avent West Community Development Corporation, Wake Interfaith Alliance, Southampton County Hospice of Virginia, and Columbus County Ministerial Association; and

Whereas, Reverend Lambeth taught religious courses at Southeastern Community College from 1985 to 1988 and Chowan College from 2000 to 2001; and

Whereas, Reverend Lambeth died on October 29, 2003; and

Whereas, Reverend Lambeth will be remembered for his profound faith and the kindness he showed his fellow men; and

Whereas, Reverend Lambeth is survived by his wife, Mary Tyler Lambeth; their three children, Shari, Tyler, and Kevin; a granddaughter, Taylor Lambeth; his parents; and two brothers; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of James Brantley "Jim" Lambeth, Jr. for his service to the State of North Carolina.

SECTION 2. The General Assembly expresses its deepest sympathy to the family of James Brantley "Jim" Lambeth, Jr. for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James Brantley "Jim" Lambeth, Jr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of August, 2005.

H.J.R. 841 **Resolution 2005-46**

A JOINT RESOLUTION HONORING THE MEMORY OF THADDEUS LOVE ON THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF WARSAW.

Whereas, the Town of Warsaw, located in Duplin County, was incorporated on February 5, 1855; and

Whereas, the Town was named for Thaddeus Love, a local railroad stationmaster, who was affectionately known as "Thaddeus of Warsaw", after a character in a novel that was popular at that time; and

Whereas, years earlier, the Town had been known as Duplin Depot and later as Mooresville; and

Whereas, the railroad was instrumental in the early growth and development of Warsaw, providing the means for the Town's residents to distribute their products to other parts of the State and country; and

Whereas, Warsaw grew from 182 residents in 1880 to 1,109 by 1920; and

Whereas, in 1921, the citizens of Warsaw began honoring members of the armed forces, which was five years before Congress officially recognized Armistice Day (Veterans Day); and

Whereas, Warsaw's memorial ceremony and Veterans Day parade, which was first organized by local resident, Henry L. Stevens, Jr. and veterans of American Legion Charles R. Gavin Post 127, serve as the oldest continuous Veterans Day celebration in the nation; and

Whereas, Warsaw also serves as the location of the Duplin County Veterans Memorial Museum; and

Whereas, Warsaw has continued to grow and prosper through the continued dedication, insight, and planning of the Town's concerned leaders and citizens; and

Whereas, Warsaw's current industries include farming, building supplies, textiles, plastics manufacturing, and lumbering; and

Whereas, the Beautification of Warsaw Committee has taken on projects to enhance the appearance of the Town, which has further promoted the citizens' community spirit and pride; and

Whereas, the year 2005 marks the 150th Anniversary of the Town of Warsaw; and

Whereas, the Town's citizens have been actively preparing a yearlong celebration to commemorate the Town's historic anniversary; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Thaddeus Love for his contributions to the Town of Warsaw.

SECTION 2. The General Assembly congratulates the Town of Warsaw on its 150th Anniversary and encourages the people of this State to participate in activities commemorating this special occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Warsaw.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 2005.

H.J.R. 197 **Resolution 2005-47**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN WESLEY JONES, FORMER EDUCATOR AND INFLUENTIAL LEADER.

Whereas, John Wesley Jones grew up in the City of Wilson; and

Whereas, John Wesley Jones graduated from Charles H. Darden High School in 1941 at the age of 15; and

Whereas, John Wesley Jones spent a year helping to construct a new addition to Charles H. Darden High School before attending North Carolina A & T State University; and

Whereas, John Wesley Jones's college education was interrupted by World War II when he was drafted into the United States Navy; and

Whereas, John Wesley Jones returned to North Carolina A & T State University after serving in the United States Navy, earning a bachelor of science degree in electrical engineering in 1948 and later receiving a masters degree in mathematics; and

Whereas, John Wesley Jones was a schoolteacher in Greene and Wilson Counties from 1948 to 1968 and served as an assistant principal and principal in the Wilson County public schools from 1968 to 1988; and

Whereas, John Wesley Jones served the education community proudly as a member of State and national organizations, including the North Carolina Teachers Association, Inc., the North Carolina Association of Educators, Inc., and the National Education Association; and

Whereas, after his retirement as a principal, John Wesley Jones continued to be an advocate for education by becoming a member of the Wilson County Board of Education, serving as a member from 1988 to 2004 and as the Chair for one term; and

Whereas, John Wesley Jones rendered distinguished service to his community by helping to establish the Charles H. Darden High School Alumni Association, Inc., in 1971, a national, nonprofit organization whose primary mission is to promote the educational, cultural, and social level of the community; and

Whereas, John Wesley Jones's success in establishing the Alumni Association has allowed former students of Charles H. Darden High School, who now live in other parts of the country, to communicate and stay in touch with each other, resulting in an annual reunion held in the City of Wilson and reunions held in other states; and

Whereas, John Wesley Jones served as the Alumni Association's first president and later as executive secretary to the board of directors; and

Whereas, John Wesley Jones's vision to build a community center came true in 1991 when the Charles H. Darden Alumni Center opened, providing a location for a tutorial program and community activities; and

Whereas, John Wesley Jones, as a member of the National North Carolina A & T State University Alumni Scholarship Committee, which provided four-year scholarships to deserving high school graduates, and helped students achieve their dreams of attending college; and

Whereas, John Wesley Jones was active in the American Legion Post # 17, NAACP, Men's Civic Club, served as treasurer of the Board of Directors of the Hattie Daniels Day Care Center, and was a charter member and past president of the Beta Beta Beta Chapter of Omega Psi Phi Fraternity, Inc.; and

Whereas, John Wesley Jones was a devoted member of the Jackson Chapel First Missionary Baptist Church, serving on the Board of Trustees, Finance Committee, and as Chair of the Construction Committee for the Education Building; and

Whereas, John Wesley Jones died on April 3, 2004; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of John Wesley Jones for the service he rendered to his community, State, and nation.

SECTION 2. The General Assembly extends its deepest sympathy to the family of John Wesley Jones for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of John Wesley Jones.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of August, 2005.

S.J.R. 1179 **Resolution 2005-48**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROBERT MONROE "BOB" DAVIS, SR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Robert Monroe "Bob" Davis, Sr., was born on February 27, 1927, in the Town of China Grove to Robert Jackson Davis and Eva Mae Phillips Davis; and

Whereas, Bob Davis attended the China Grove public schools and earned a bachelors degree from Pfeiffer College in 1947 and a law degree from Wake Forest University in 1950; and

Whereas, Bob Davis practiced law for much of his life and was elected as Rowan County Solicitor, Circuit Court Judge, and District Court Judge; and

Whereas, Bob Davis served his profession as a member of the North Carolina State Bar, North Carolina Bar Association, American Trial Lawyers Association, North Carolina Academy of Trial Lawyers, and was President of the Rowan County Bar Association and the 19th District Bar Association; and

Whereas, Bob Davis served with honor and distinction as a member of the General Assembly, serving one term in the Senate from 1983 through 1984; and

Whereas, during his tenure in the General Assembly, Bob Davis was a member of several committees, including Appropriations, Judiciary, and Local Government and Regional Affairs; and

Whereas, Bob Davis introduced legislation that changed the laws related to seat belt use, adoption, and methods of execution for capital punishment, and was instrumental in getting funding for various projects, including the neonatal unit at Baptist Hospital, numerous libraries, and the North Carolina Transportation Museum in Spencer; and

Whereas, Bob Davis was a member of several civic and fraternal organizations, including the Chamber of Commerce, Shriners, Elks, Civitans, Scottish Rite, Woodmen of the World, Knights of Pythias, and the Eureka Masonic Lodge; and

Whereas, Bob Davis was a loyal and devoted member of his church, First Baptist Church of Salisbury, where he served as Chair of the Board of Trustees and Board of Deacons, and as a Sunday schoolteacher for more than 52 years; and

Whereas, over a period of 13 years, Bob Davis served as a coach for Little League baseball and middle and high school church league basketball teams; and

Whereas, Bob Davis served in World War II as a member of the United States Navy and served as State Commander of the American Legion; and

Whereas, Bob Davis died April 2, 2005, leaving to cherish his memory his wife of 52 years, Mary Anne Austin Davis; his children, Robert M. Davis, Jr., Janet Anne Davis Jeter, James Austin Davis, Jonathan David Davis, and Jennifer Davis Hammond; adopted son, Chris Crane; and 13 grandchildren; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Robert Monroe "Bob" Davis, Sr., and expresses its appreciation for the service he rendered to his community, Rowan County, and the State of North Carolina.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Robert Monroe "Bob" Davis, Sr., for the loss of a beloved husband, father, and grandfather.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Robert Monroe "Bob" Davis, Sr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

H.J.R. 1650 **Resolution 2005-49**

A JOINT RESOLUTION HONORING THE MEMORY OF ABRAHAM L. FREEDLANDER FOR HIS CONTRIBUTIONS TO HAYWOOD COMMUNITY COLLEGE, ON THE OCCASION OF THE COLLEGE'S FORTIETH ANNIVERSARY.

Whereas, Haywood County Technical Institute was established as an extension unit of the Asheville-Buncombe Technical Institute on August 1, 1965; and

Whereas, Haywood County Technical Institute's initial student body consisted of 39 students who were enrolled in the licensed practical nursing program (LPN) and 93 students enrolled in continuing education programs; and

Whereas, Haywood County Technical Institute's first graduating class consisted of 15 students from the LPN program; and

Whereas, Haywood County Technical Institute became a contractual institution operating under an agreement between the State Board of Education and the Haywood County Board of Education on September 7, 1967; and

Whereas, Haywood County Technical Institute was approved as a chartered technical institution on December 13, 1968; and

Whereas, in 1969, Haywood County Technical Institute was able to acquire land for a new campus due to a generous financial gift by Abraham L. Freedlander and other donors; and

Whereas, Abraham L. Freedlander helped preserve an oak forest on the campus of Haywood County Technical Institute and made other significant contributions to the school; and

Whereas, Haywood County Technical Institute became known as Haywood Technical College on September 11, 1979, and later as Haywood Community College on November 10, 1987; and

Whereas, Haywood Community College has experienced phenomenal growth; and

Whereas, since 1965 Haywood Community College has served over 62,000 curriculum students; and

Whereas, Haywood Community College's enrollments in continuing education have reached nearly 225,000 students, with an average of 10,000 students annually; and

Whereas, Haywood Community College offers 50 curricular programs, 47 of which are applied science degrees for vocations and technical majors; and

Whereas, Haywood Community College's assets have quadrupled in recent years, which is a reflection of the local citizens' enormous support and pride in the institution; and

Whereas, in 2005, Haywood Community College will be celebrating 40 years of providing educational opportunities to the citizens of Haywood County and surrounding areas; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Abraham L. Freedlander for his contributions to Haywood Community College and the State of North Carolina.

SECTION 2. The General Assembly extends its congratulations to Haywood Community College on its 40th anniversary.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the President of Haywood Community College.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 2005.

H.J.R. 1615 **Resolution 2005-50**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN D. HALL, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, John D. Hall was born on January 18, 1957, in Edgecombe County to John Hall and Lois Marie Richardson Hall; and

Whereas, John D. Hall graduated from Scotland Neck High School in 1975 and furthered his education by taking courses at Lenoir Community College; and

Whereas, John D. Hall was the owner of WYAL, a gospel radio station based in Scotland Neck, and was a member of the National Association of Black Owned Broadcasters and the North Carolina Association of Broadcasters; and

Whereas, John D. Hall served as a member and vice-chair of the Halifax County Board of Commissioners and a member of the Scotland Neck City Council, North Carolina Association of County Commissioners, and North Carolina Association of Black County Officials; and

Whereas, John D. Hall served with honor and distinction in the North Carolina House of Representatives from 2000 to 2005; and

Whereas, during his tenure in the General Assembly, John D. Hall made contributions as a member of numerous committees, including Aging, Appropriations, and Occupational Safety and Health, and served as vice-chair of the Insurance Committee and chair of the Alcoholic Beverage Control Committee; and

Whereas, John D. Hall was active in his community, serving as chair of the Halifax County Department of Social Services and as a member of the Halifax County Mental Health Board and the Choanoke Area Development Association; and

Whereas, John D. Hall was a faithful member of the Shiloh Missionary Baptist Church in Scotland Neck, where he served as a trustee; and

Whereas, John D. Hall was named Omega Man of the Year and was recognized in Who's Who Among Black Elected Officials and the International Who's Who of Entrepreneurs; and

Whereas, John D. Hall died on March 17, 2005; and

Whereas, John D. Hall is survived by his sister, Georgette Hall; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of John D. Hall and expresses the appreciation of this State and its citizens for his life and service.

SECTION 2. The General Assembly wishes to extend its sympathy to the family and friends of John D. Hall for the loss of a beloved family member and friend.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of John D. Hall.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of August, 2005.

S.J.R. 1180 **Resolution 2005-51**

A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO DETERMINE BY JOINT BALLOT THE CONTESTED ELECTION FOR SUPERINTENDENT OF PUBLIC INSTRUCTION.

Whereas, Article VI, Section 2 of the Constitution of North Carolina provides that a contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law; and

Whereas, G.S. 163-182.13A(d) provides for the appointment of a joint select committee to initially hear the contest, and that the committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action; and

Whereas, that committee has been appointed, met, and made findings and recommendations; and

Whereas, G.S. 163-182.13A(e) provides that the final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding; Now, therefore,

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

SECTION 1. On Tuesday, August 23, 2005, immediately upon the adjournment of the joint session of the General Assembly confirming the Governor's appointments to the State Board of Education, the Senate and the House of Representatives shall meet in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding, to determine by joint ballot the contested election for the Council of State office of Superintendent of Public Instruction.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

H.J.R. 1795 **Resolution 2005-52**

A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO ACT ON A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the House of Representatives and the Senate the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2013; Now, therefore,

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

SECTION 1. The General Assembly shall meet in joint session on August 23, 2005, at 2:00 P.M. to act on a joint resolution providing for confirmation of the appointments by the Governor of new members to the State Board of Education.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

H.J.R. 1793 **Resolution 2005-53**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. BARBARA KINARD PHILLIPS, DISTINGUISHED NORTH CAROLINIAN.

Whereas, Barbara Kinard was born in Winston-Salem on September 5, 1936, to Clarence Kinard and Alma Mae Lowe Kinard; and

Whereas, Barbara Kinard attended the Winston-Salem public schools and graduated valedictorian of Atkins High School in 1953; and

Whereas, Barbara Kinard received a bachelor of science degree from Winston-Salem State University, a masters degree from Indiana University, and a doctorate degree from the University of North Carolina at Greensboro, and furthered her education by taking courses at Brigham Young University in Utah and the University of California at Berkeley; and

Whereas, Barbara Kinard married Garret Elroy Phillips, Jr., and together they had a daughter, Eleanor; and

Whereas, Barbara Kinard Phillips mentored countless students throughout the Winston-Salem area as a teacher, guidance counselor, librarian, principal, and an assistant superintendent; and

Whereas, Barbara Kinard Phillips served her profession as a member of the American Association of School Administrators and the Association for Supervision and Curriculum Development and as an educator on loan to the Hanes Corporation; and

Whereas, Barbara Kinard Phillips was actively involved in almost every aspect of her community, serving on many boards and participating in various civic organizations, including the Winston-Salem Foundation, National Urban League, Winston-Salem Girl Scouts of America, March of Dimes, National Council of Negro Women, The Links, and the Black Leadership Roundtable; and

Whereas, Barbara Kinard Phillips served as a trustee of Winston-Salem State University and as president of the Child Guidance Center of Winston-Salem; and

Whereas, Barbara Kinard Phillips was a devoted member of Alpha Kappa Alpha Sorority, Incorporated, serving as the organization's 20th national president and the seventh mid-Atlantic regional director; and

Whereas, Barbara Kinard Phillips was a faithful member of the First Baptist Church of Winston-Salem for more than 50 years and served as a trustee and chair of the church's personnel and finance committees; and

Whereas, Barbara Kinard Phillips received numerous awards and honors, and was recognized by Ebony Magazine as one of the nation's 100 Most Influential African-Americans; and

Whereas, Barbara Kinard Phillips died on July 5, 2005; and

Whereas, Barbara Kinard Phillips is survived by her husband, Garret Elroy Phillips, Jr., a daughter, Eleanor Phillips Phipps, one grandson, and two sisters; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of Barbara Kinard Phillips and recognizes her many years of public service to her community and the people of this State.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Barbara Kinard Phillips for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Barbara Kinard Phillips.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

H.J.R. 1796 **Resolution 2005-54**

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS OF MELISSA BARTLETT, SHIRLEY EAST HARRIS, AND HOWARD N. LEE TO MEMBERSHIP ON THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the North Carolina Constitution and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the House of Representatives and the Senate the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2013; Now, therefore,

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

SECTION 1. The appointments of Melissa Bartlett, Shirley East Harris, and Howard N. Lee to membership on the State Board of Education for terms to expire March 31, 2013, are confirmed.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

H.J.R. 1799 **Resolution 2005-55**

A JOINT RESOLUTION SETTING THE DATE FOR THE HOUSE OF REPRESENTATIVES AND THE SENATE TO ELECT MEMBERS TO THE STATE BOARD OF COMMUNITY COLLEGES.

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

SECTION 1. Pursuant to G.S. 115D-2.1(b)(4)f., the House of Representatives and the Senate shall elect members to the State Board of Community Colleges during the regular sessions of the two chambers to be held on Wednesday, August 24, 2005. At that time the House of Representatives shall elect one member to the State Board for a term of six years beginning July 1, 2005. The Senate also shall elect one member to the State Board for a term of six years beginning July 1, 2005.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

H.J.R. 1797 **Resolution 2005-56**

A JOINT RESOLUTION HONORING THE EARLY SETTLERS OF THE TOWN OF ROXBORO ON THE OCCASION OF THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN'S INCORPORATION.

Whereas, the Town of Roxboro, located in central Person County, was once a stagecoach stop between Hillsborough and South Boston; and

Whereas, for many years, the area was known as Moccasin Gap and later as Roxborough for the Town of Roxburgh, Scotland; and

Whereas, in 1793, a newly built courthouse enabled the area to become the county seat; and

Whereas, the Town of Roxboro was incorporated on January 9, 1855; and

Whereas, the Town of Roxboro's first officers included Mayor W.R. Reade, Commissioners G.D. Satterfield, C.S. Winstead, James Wright, and E.G. Reade; and

Whereas, other early officers of the Town of Roxboro included W.R. Reade, magistrate of police; Stephen M. Dickens, treasurer; Henry Satterfield, constable; John M. Winstead, overseer of the streets; and Benjamin A. Thaxton, secretary; and

Whereas, Roxboro has been home to many great North Carolinians, including: The Honorable William W. Kitchin, a former six-term member of the United States House of Representatives and Governor of the State of North Carolina; Reginald L. Harris, former Lieutenant Governor of North Carolina and Speaker of the House of Representatives; Enos Slaughter, an outstanding baseball player and member of the National Baseball Hall of Fame; and Jim Thorpe, a well-known golfer and member of the Senior PGA Tour; and

Whereas, Roxboro is known for its contributions to industry and agriculture; and

Whereas, Roxboro has a population of 8,861 citizens and has continued to grow and prosper through the continued dedication, insight, and planning of the Town's concerned leaders and citizens; and

Whereas, the year 2005 marks the 150th anniversary of the incorporation of the Town of Roxboro and is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

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

SECTION 1. The General Assembly honors the memory of the early settlers of the Town of Roxboro and congratulates the Town on its 150th anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Roxboro.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

S.J.R. 1171 **Resolution 2005-57**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM HOLLAND THOMAS, FORMER MEMBER OF THE GENERAL ASSEMBLY, ON THE 200TH ANNIVERSARY OF HIS BIRTH.

Whereas, William Holland Thomas was born on February 5, 1805, in Haywood County; and

Whereas, William Holland Thomas was the son of Richard Thomas, a Revolutionary War veteran, who died before he was born, and Temperance Calvert Thomas; and

Whereas, as a young boy, William Holland Thomas befriended members of the local Oconaluftee Indians or Qualla Clan, which later became the Eastern Band of Cherokee Indians; and

Whereas, as a teenager, William Holland Thomas began working at a local trading post near his home, during which time he learned the Cherokee language and customs; and

Whereas, William Holland Thomas developed a mutual friendship with Chief Yonaguska and was later adopted by the Chief as a member of the Eastern Band of Cherokee Indians; and

Whereas, at the age of 15, William Holland Thomas became an attorney after studying from a set of law books that was given to him while he was working at the trading post; and

Whereas, as an adult, William Holland Thomas was an influential man in his community and the Western portion of the State; and

Whereas, in addition to practicing law, William Holland Thomas was also a businessman, building stores, turnpikes, and railroads; and

Whereas, during the 1830s, William Holland Thomas served as an agent for the Eastern Band of Cherokee Indians, traveling to Washington, DC, to persuade the federal government to allow them to remain in North Carolina and to defend their claims for financial payments promised them; and

Whereas, William Holland Thomas was successful in helping the Eastern Band of Cherokee Indians win the right to be treated as citizens of North Carolina, to govern themselves in their own communities, and to become landowners; and

Whereas, upon the death of Chief Yonaguska in 1839, William Holland Thomas was named Chief of the Eastern Band of Cherokee Indians, a title he held for 28 years; and

Whereas, prior to his death, William Holland Thomas recounted his life with the Cherokees to a Smithsonian Institute ethnologist, James Mooney, which greatly contributed to the preservation of the history and culture of the Eastern Band of Cherokee Indians; and

Whereas, William Holland Thomas served as a State senator from 1848 to 1861; and

Whereas, during the Civil War, William Holland Thomas served as Colonel of a unit known as Thomas' Legion, which consisted of several regiments, including two composed of Cherokee Indians; and

Whereas, William Holland Thomas was married to Sarah Love and together they had three children, William H. Thomas, Jr., James Robert Thomas, and Sallie Love Thomas; and

Whereas, after a number of years of declining health and hospital confinement, William Holland Thomas died on May 10, 1893; and

Whereas, to celebrate the 200th anniversary of the birth of William Holland Thomas, the Cashiers Historical Society held a symposium, entitled "The Life and Times of William Holland Thomas" on May 5, 6, and 7, 2005; Now, therefore,

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

SECTION 1. The General Assembly honors the life and memory of William Holland Thomas and acknowledges his service to the State and the Eastern Band of Cherokee Indians.

SECTION 2. The General Assembly encourages the citizens of this State to join the Cashiers Historical Society in celebrating the 200th anniversary of the birth of William Holland Thomas.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Cashiers Historical Society.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

S.J.R. 1184 **Resolution 2005-58**

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 2005 GENERAL ASSEMBLY TO MEET IN 2006 AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION.

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

SECTION 1. When the Senate and the House of Representatives adjourn on the date this resolution is ratified, they stand adjourned to reconvene on Tuesday, May 9, 2006, at 12:00 noon.

SECTION 1.1. It is the sense of the Senate that no Senator should accept per diem on account of the 2005 Regular Session after August 24, 2005, until it reconvenes in 2006.

SECTION 2. During the regular session that reconvenes on Tuesday, May 9, 2006, only the following matters may be considered:

(1) Bills directly and primarily affecting the State budget, including the budget of an occupational licensing board, for fiscal year 2006-2007, provided that the bill must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Thursday, May 18, 2006, and must be introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 P.M. Thursday, May 25, 2006.

(2) Bills and resolutions introduced in 2005 and having passed third reading in 2005 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(d) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of the receiving house.

(3) Bills and resolutions implementing the recommendations of:

a. Study commissions, authorities, and statutory commissions authorized or directed to report to the 2006 Session;

b. The General Statutes Commission, the Courts Commission, or any commission created under Chapter 120 of the General Statutes that is authorized or directed to report to the General Assembly;

c. The House Ethics Committee;

d. Select committees; or

e. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

A bill authorized by this subdivision must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Wednesday, May 10, 2006, and must be filed for introduction in

the Senate or introduced in the House of Representatives no later than 4:00 P.M. Wednesday, May 17, 2006.

(4) Any local bill that has been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 P.M. Wednesday, May 17, 2006, is introduced in the House of Representatives or filed for introduction in the Senate by 4:00 P.M. Wednesday, May 24, 2006, and is accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and that the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.

(5) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.

(6) Any matter authorized by joint resolution passed during the 2006 Regular Session by a two-thirds majority of the members of the House of Representatives present and voting and by a two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.

(7) A joint resolution authorizing the introduction of a bill pursuant to subdivision (6) of this section.

(8) Any bills primarily affecting any State or local pension or retirement system, provided that the bill has been submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Wednesday, May 17, 2006, and is introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 P.M. Wednesday, May 24, 2006.

(9) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina or authorized for introduction under Senate Rule 40(b) or House Rule 31.

(10) A joint resolution adjourning the 2005 Regular Session, sine die.

(11) Bills to disapprove rules under G.S. 150B-21.3.

(12) Constitutional amendments.

SECTION 3. A bill containing no substantive provisions may not be introduced in the House of Representatives during the 2006 Regular Session.

SECTION 4. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interims between sessions to:

(1) Review matters related to the State budget for the 2005-2007 biennium,

(2) Prepare reports, including revised budgets, or

(3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate,

except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 2 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of September, 2005.

H.J.R. 1801 **Resolution 2005-59**

A JOINT RESOLUTION ADJOURNING THE RECONVENED SESSION.

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

SECTION 1. When the House of Representatives and the Senate, constituting the Reconvened 2005 Session of the 2005 General Assembly, adjourn on Wednesday, October 12, 2005, they do stand adjourned to reconvene as provided in Resolution 2005-58.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of October, 2005.

EXECUTIVE ORDERS
OF
GOVERNOR MICHAEL F. EASLEY

Title	Number
PUBLIC SCHOOL FUNDING	61
PROCLAMATION OF STATE OF DISASTER FOR DARE AND HYDE COUNTIES	62
PROCLAMATION OF STATE OF DISASTER BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA	63
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE CHARLEY	64
PROCLAMATION OF STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA	65
PROCLAMATION OF STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA	66
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANES CHARLEY AND FRANCES	67
PROCLAMATION OF A STATE OF EMERGENCY AND STATE OF DISASTER BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA	68
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE IVAN	69
PROCLAMATION OF STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA	70
PROCLAMATION OF STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA	71
TERMINATION OF EXECUTIVE ORDERS 45 AND 71	72
NORTH CAROLINA MOTORSPORTS ADVISORY COUNCIL	73
REPLACING EXECUTIVE ORDERS NO. 75 AND 118 CONCERNING CREATION OF A PROGRAM OFFICE, A POLICY BOARD, AND ADVISORY COMMITTEES TO SUPPORT SUSTAINABLE NATURAL RESOURCE AND ENVIRONMENTAL MANAGEMENT IN THE ALBEMARLE-PAMLICO ESTUARINE SYSTEM	74
REESTABLISHING AND MODIFYING PROGRAMS ESTABLISHED UNDER THE HURRICANE FLOYD RECOVERY ACT OF 1999 (S.L. 1999-463 EXTRA SESSION) AND AMENDING EXECUTIVE ORDER #8	75
EXTENDING EXECUTIVE ORDER NO. 1	76

TEACHER ADVISORY COMMITTEE 77

PROCLAMATION OF STATE OF DISASTER FOR THE TOWN OF CAROLINA SHORES, TOWN OF LELAND AND CITY OF SOUTHPORT (BRUNSWICK COUNTY) 78

NORTH CAROLINA FILM COUNCIL 79

ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGRAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS 80

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 61
PUBLIC SCHOOL FUNDING

WHEREAS, the Constitution of North Carolina, Article I, Section 15, and Article IX, Section 2, combine to guarantee every child of this State an opportunity to receive a sound basic education in our public schools; and,

WHEREAS, in the lawsuit of Leandro v. State of North Carolina, 346 N.C. 336 (1997), the North Carolina Supreme Court defined a "sound basic education" by four enumerated requirements. (Id. p. 347); and,

WHEREAS, based on Leandro, a lawsuit was filed by several school districts, Hoke County Board of Education, et al. and Asheville City Board of Educators, et al., vs. State of North Carolina; State Board of Education, alleging that the State of North Carolina had failed to provide adequate funds for the education of children in low-wealth and other school districts; and

WHEREAS, The Honorable Howard E. Manning, Jr., Superior Court Judge of Wake County, entered a judgment on April 4, 2002, ordering the State to remedy the deficiencies for those children, regardless of the county they reside in, who are not being provided the basic educational services. The court further observed that this responsibility cannot be passed down by the State of North Carolina to the local boards of education; and,

WHEREAS, the State Board of Education and the State Superintendent of Public Instruction have developed a plan to comply with the court order and requested supplemental funds to support disadvantaged students in certain low-wealth counties; and,

WHEREAS, Session Law 2004-124, House Bill 1414, also known as the budget bill, did not provide funding to address the court mandate; and

WHEREAS, the state has unexpended appropriations from the 2003-04 fiscal year remaining that were not allocated for public instruction use by the General Assembly in the budget bill; and

WHEREAS, the Public School Fund appropriations for the 2003-04 fiscal year had not been used completely and were not needed to balance the 2004-05 fiscal year budget; and,

WHEREAS, the court order constitutes a continuing obligation of the state.

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

1. Any unexpended 2003-04 appropriations in the Department of Public Instruction in excess of the amounts used by the legislature in the formation of the final 2004-05 budget as signed into law by the Governor shall be carried forward and used for purposes related to school districts in the manner proposed by the State Board of Education and the State Superintendent of Public Instruction in response to the court order. These funds, together with other funds already otherwise expended or committed, shall not exceed the total amount appropriated to the Public School Fund for the 2003-04 school year.

2. The funds authorized under this Executive Order are deemed to be continuing obligations of the State necessary to comply with the court order.

This Executive Order shall be effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 28th day of July, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

Elaine F. Marshall
by and through
Rodney S. Maddox
Chief Deputy Secretary

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 62
PROCLAMATION OF STATE OF DISASTER FOR DARE AND HYDE COUNTIES

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§ 166A-4 and 14.288.1(10), exists in the State of North Carolina, specifically in Dare and Hyde Counties as a result of the impact of Hurricane Alex on August 3, 2004.

WHEREAS, on August 3, 2004, Dare and Hyde Counties proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria of Type I disaster are met including the following: 1) Receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; 2) Dare and Hyde Counties declared a local state of emergency pursuant to N.C.G.S. § 166A-8 and N.C.G.S. §§ 14-288.12, 14-288.13 and 14-288.14, and forwarded a written copy of the declaration to the Governor; 3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or meets or exceeds the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2)a; and, 4) A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

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

Section 1. Pursuant to N.C.G.S. §§ 166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for Dare and Hyde Counties.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

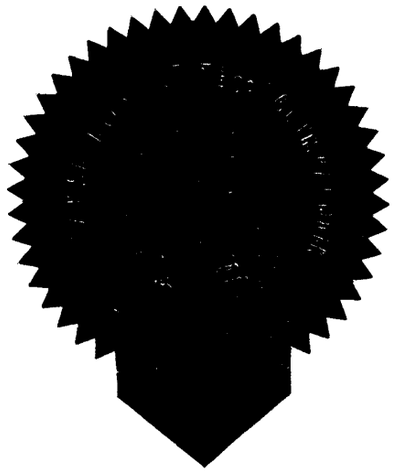
Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced City.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer of the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the State of Disaster and State of Emergency and Type I disaster proclamation for Dare and Hyde Counties, issued on August 6, 2004, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

Done in the Capital City of Raleigh, North Carolina this the 6th day of August, 2004.



MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE MARSHALL
SECRETARY OF STATE

2

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 63
PROCLAMATION OF STATE OF DISASTER
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of disaster and state of emergency, as defined in G.S. 166A-4(3) and G.S. 14-288.1(10), exists in the State of North Carolina, due to the approach and proximity of Tropical Storm Bonnie and Hurricane Charley, which began on August 12, 2004.

Section 2. Pursuant to G.S. 166A-6 and 14-288.15, I, therefore, proclaim the existence of a state of disaster and a state of emergency in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

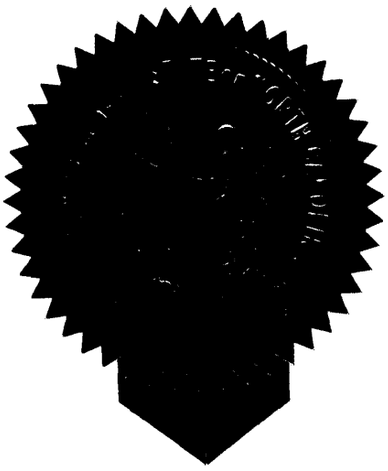
Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency or disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies;

and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 13th day of August in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.



MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE MARSHALL
SECRETARY OF STATE

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 64
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANE CHARLEY

WHEREAS, the Governor of Florida has proclaimed that a State of Emergency and State of Disaster exists in Florida due to Hurricane Charley and thereby, has requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the State of Florida; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and166A-6(c)(3), the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida's grief stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in that state will likely suffer losses and, therefore suffer an imminent threat of widespread damage.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, IT IS ORDERED:

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation **shall waive** certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49, for the vehicles transporting equipment and supplies along North Carolina Interstate roadways, en route to Florida's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

(A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 95,000 pounds gross weight, whichever is less.

(B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.

(C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

(A) The $50.00 fee listed in N.C.G.S. § 105-449.49, for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1), applies.

(B) The registration requirements under N.C.G.S. § 20-382, concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.

(C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina Interstate routes **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the State of Florida, **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 26 days from the date of this Order.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3, in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Charley.

This Executive Order is effective immediately and shall remain in effect for twenty-six (26) days.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the city of Raleigh this 18th day of August, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

by and through
Rodney S. Maddox
Chief Deputy Secretary

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 65
PROCLAMATION OF STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of emergency, as defined in N.C.G.S. § 14-288.1(10), exists in the State of North Carolina, due to Hurricane Frances, which began on September 1, 2004, and has caused flooding and tornadoes throughout regions of the State.

Section 2. Pursuant to N.C.G.S. § 14-288.15, I, therefore, proclaim the existence of a state of emergency in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and; (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

and; (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

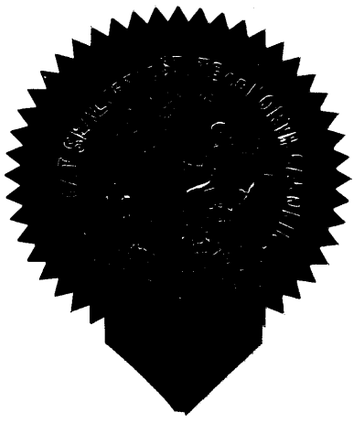
Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 7th day of September in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

Rodney S. Maddox, Chief Deputy Secretary
ELAINE MARSHALL
SECRETARY OF STATE



State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 66
PROCLAMATION OF STATE OF DISASTER
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of disaster, as defined in N.C.G.S. § 166A-4(3), exists in the State of North Carolina, due to Hurricane Frances, which began on September 1, 2004, and has caused flooding and tornadoes throughout regions of the State.

Section 2. Pursuant to N.C.G.S. § 166A-6, I, therefore, proclaim the existence of a state of disaster in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and; (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 9th day of September in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE MARSHALL by and through
SECRETARY OF STATE Rodney Maddox
Chief Deputy Sec

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 67
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANES CHARLEY AND FRANCES

WHEREAS, the Governor of Florida has proclaimed that a State of Emergency and State of Disaster exists in Florida due to Hurricanes Charley and Frances and thereby, has requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the State of Florida; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and166A-6(c)(3), the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida's grief stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in that state will likely suffer losses and, therefore suffer an imminent threat of widespread damage.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, IT IS ORDERED:

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation **shall waive** certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-119, 20-382, 105-449.47, 105-449.49, for the vehicles transporting equipment and supplies along North Carolina Interstate roadways, en route to Florida's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

(A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 95,000 pounds gross weight, whichever is less.

(B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.

(C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

(A) The $50.00 fee listed in N.C.G.S. § 105-449.49, for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1), applies.

(B) The registration requirements under N.C.G.S. § 20-382, concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.

(C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

(D) The $200.00 fee listed in N.C.G.S. § 20-119, for an annual permit to transport mobile homes. This only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters moving mobile homes under this section are exempted from the requirement to enter weigh stations as required under N.C.G.S. § 20-118.1. However, these same transporters **shall** have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the annual permit from NC DOT, and the manufacturers bill of laden for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements.

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina Interstate routes **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the State of Florida, **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 51 days from the date of this Order.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3, in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricanes Charley and Frances.

Executive Order Number 64 is hereby amended and superseded by this Executive Order. This Executive Order is effective immediately and shall remain in effect for fifty-one (51) days.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the city of Raleigh this 10th day of September, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 68
PROCLAMATION OF A STATE OF EMERGENCY AND STATE OF DISASTER
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of emergency and disaster, as defined in G.S. 166A-4(3) and G. S. 14-288.1(10), exists in the State of North Carolina, as a result of Hurricane Ivan which is expected to produce excessive rainfall, widespread flooding and tornadoes across the regions of the State.

Section 2. Pursuant to G. S. 166A-6 and 14-288.15, I therefore proclaim the existence of a state of emergency and disaster in North Carolina.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provision of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to the Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

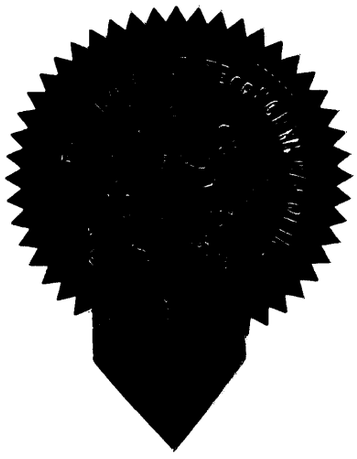
Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency or threatened disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this the sixteenth day of September in the year two thousand and four.

Michael F. Easley
Governor



ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 69
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANE IVAN

WHEREAS, I have proclaimed that a State of Emergency and Disaster exists in North Carolina due to Hurricane Ivan thereby, justifying an exemption from 49 CFR Part 390.21 (Marking of Vehicles) and Part 395 (Hours of Service) of the Federal Motor Carrier Safety Regulations; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing FOOD, FUEL, EQUIPMENT, SUPPLIES AND UTILITIES to relieve our grief stricken counties must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and, the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. § 166-A-4(3).

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, IT IS ORDERED:

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49, for the vehicles transporting FOOD, FUEL, EQUIPMENT, SUPPLIES AND

UTILITIES along North Carolina roadways to our grief stricken counties affected by Hurricane Ivan.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

(A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.

(B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.

(C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

(A) The $50.00 fee listed in N.C.G.S. § 105-449.49, for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1), applies.

(B) The registration requirements under N.C.G.S. § 20-382, concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.

(C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 5. The waiver of regulations under 49 CFR Part 390.21 (Marking of Vehicles) and Part 395 (Hours of Service) of the Federal Motor Carrier Safety Regulations, **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Ivan.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the city of Raleigh this the 17th day of September, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 70
PROCLAMATION OF STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of emergency, as defined in N.C.G.S. § 14-288.1(10), exists in the State of North Carolina, due to Hurricane Jeanne, which began on September 27, 2004, which is expected to produce excessive rainfall, widespread flooding and tornadoes across the regions of the State.

Section 2. Pursuant to N.C.G.S. § 14-288.15, I, therefore, proclaim the existence of a state of emergency in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace i the State.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the media and other organizations calculated to bring its contents to the attention general public; (b) unless the circumstances of the state of emergency preven to be promptly filed with the Secretary of Crime Control and Public Safety,

of State, and the clerks of superior court in the counties to which it applies; and; (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 27th day of September in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.

Mike Easley

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

Elaine F. Marshall

ELAINE MARSHALL
SECRETARY OF STATE

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 71
PROCLAMATION OF STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of emergency, as defined in N.C.G.S. § 14-288.1(10), exists in Wake County, North Carolina, due to snow and ice, which began on January 19, 2005, and which has produced hazardous travel conditions.

Section 2. Pursuant to N.C.G.S. § 14-288.15, I, therefore, proclaim the existence of a state of emergency in Wake County.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the county.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the county to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 19th day of January in the year of our Lord two thousand and five.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE MARSHALL
SECRETARY OF STATE

by and through
Chief Deputy Secretary
Rodney S. Maddox

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 72
TERMINATION OF EXECUTIVE ORDERS 45 AND 71

WHEREAS, Executive Order No. 45 was signed on February 16, 2003, providing for the waiver of rules and regulations which limited the hours of operators of certain commercial vehicles and lifting weight restrictions on certain vehicles; and,

WHEREAS, Executive Order No. 45 was issued along with a Proclamation of a State of Emergency by the Governor of the State of North Carolina as a result of a winter storm which produced sleet and freezing rain across the Piedmont and mountain regions of the State on February 17, 2003; and,

WHEREAS, Executive Order No. 71 was signed on January 19, 2005, declaring a State of Emergency as a result of snow and ice, which caused hazardous travel conditions in Wake County; and,

WHEREAS, both Executive Orders contained the provision that they would be effective until terminated in writing.

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

Executive Order 45, dated February 16, 2003, and Executive Order 71, dated January 19, 2005, are hereby terminated due to the cessation of their respective emergencies.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the great Seal of the State of North Carolina at the Capital in Raleigh, this the 27th day of January, 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 73
NORTH CAROLINA MOTORSPORTS ADVISORY COUNCIL

WHEREAS, motorsports has had not only a historic impact on North Carolina but also an economic impact, including the first NASCAR race in 1949 held in Charlotte, NASCAR headquarters were formerly located in North Carolina, and ninety percent of NASCAR race teams are currently located in this State; and

WHEREAS, the motorsports industry in North Carolina has suffered the loss of two major racing events at the North Carolina Speedway located in Rockingham, with other states recruiting events, race teams and other motorsports elements, which has caused an adverse economic impact on North Carolina; and

WHEREAS, the State of North Carolina must consider measures that will preserve, strengthen and expand this historical economic engine; an industry which contributes approximately $5 billion a year to the state's economy, providing more than 24,000 direct and indirect jobs to our citizens;

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

Section 1. Establishment.

The North Carolina Motorsports Advisory Council ("Advisory Council") is hereby established. The Advisory Council shall be composed of not less than twelve or more than

twenty members appointed by and to serve at the pleasure of the Governor. The Governor shall designate a Chair and Vice Chair. Members shall include, but not be limited to, representatives of the motorsports industry, the Office of the Governor, and the Department of Commerce.

Section 2. Terms of Membership.

All members shall be appointed for a term of two years.

Section 3. Vacancies.

A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term.

Section 4. Meetings.

The Advisory Council shall meet at least twice yearly and at other times at the call of the Chair or the Governor.

(a) The Council shall meet as a quorum. A quorum, for the purposes of this Order, is defined as a simple majority.

(b) The Advisory Council is authorized to conduct public hearings.

Section 5. Staff Assistance.

The Department of Commerce shall provide clerical support and other services required by the Advisory Council.

Section 6. Duties.

The Advisory Council shall have the following duties:

(a) Review the recommendations and findings from the Sanford Holshouser Development Group motorsports economic impact/development study conducted by Dr. John Connaughton of UNC-Charlotte and make recommendations thereof;

(b) Receive and review the feasibility study for the testing and research complex conducted by a UNC-Charlotte steering committee;

1. Provide assistance and oversight regarding the RFP process for the location of a testing and research complex, if the UNC-Charlotte steering committee feasibility study and business plan supports an investment in such a facility, and addressing concerns regarding where such a facility should be located;

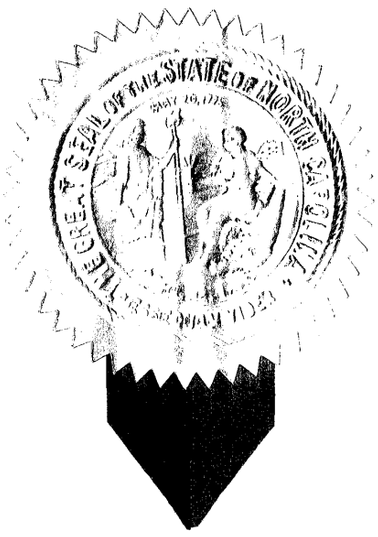
(c) Recommend policy, procedures and program initiatives to protect, strengthen, and expand the motorsports industry through, but not limited to, research and development other than a testing and research complex;

(d) Provide ongoing advice and consultation to State policy leaders as to how to recruit, retain and expand the motorsports industry in North Carolina; and

(e) Other such duties as assigned by the Chair or the Governor.

This Order shall be effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 28th day of February, 2005.



MICHAEL F. EASLEY

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 74
REPLACING EXECUTIVE ORDERS NO. 75 AND 118 CONCERNING CREATION OF A PROGRAM OFFICE, A POLICY BOARD, AND ADVISORY COMMITTEES TO SUPPORT SUSTAINABLE NATURAL RESOURCE AND ENVIRONMENTAL MANAGEMENT IN THE ALBEMARLE-PAMLICO ESTUARINE SYSTEM

WHEREAS, the Albemarle-Pamlico National Estuary Program (APNEP), formerly known as the Albemarle-Pamlico Estuarine Study, is a cooperative effort established by the State of North Carolina and the United States Environmental Protection Agency; and

WHEREAS, the mission of the APNEP is to identify, restore, and protect the significant resources in the Albemarle-Pamlico estuarine system in North Carolina and southeast Virginia; and

WHEREAS, the APNEP is a collaborative effort involving state, federal, regional, local, educational, and public entities in the protection and enhancement of the Albemarle-Pamlico estuarine system; and

WHEREAS, the APNEP was one of the first National Estuary Programs to be designated under Section 320 of the Clean Water Act; and

WHEREAS, the APNEP has provided extensive information and supported scientific research about natural resources and environmental issues facing the Albemarle-Pamlico estuary program since 1987; and

WHEREAS, scientific information from the Albemarle-Pamlico Estuarine Study was combined with extraordinary involvement by citizens to develop a Comprehensive Conservation and Management Plan (CCMP) entitled "A Guide to Environmental and Economic Stewardship in the Albemarle-Pamlico Region" that was adopted in 1994; and

WHEREAS, the CCMP also recognizes that, from an ecological and economic standpoint, the most effective means to ensure the environmental health and sustainability of the Albemarle-Pamlico estuarine system is to manage and protect the resources in the five major river basins of the watershed; and

WHEREAS, the CCMP also recognizes the importance of involving the public in making decisions regarding natural resources and environmental management, and research;

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

Section 1. Establishment.

An **Albemarle-Pamlico National Estuary Program Office** is hereby established to coordinate and facilitate the implementation and advancement of the CCMP, the APNEP mission, and the activities of the Policy Board and Advisory Committees. The APNEP Program Office shall serve as a conduit for information between the Policy Board, Advisory Committees, state and federal agencies, local government, tribes, academia, and the public. The Program Office will be located in the Offices of the Secretary of the North Carolina Department of Environment and Natural Resources (DENR).

A **Policy Board** for the Albemarle-Pamlico watershed shall be established to work with DENR and the Program Office to support, evaluate, update, advocate, and guide the implementation of the CCMP and the APNEP mission.

A Committee of Citizen Advisors ("**Citizen Advisory Committee**") for the Albemarle-Pamlico watershed shall be established to advise and support the Policy Board, and to serve as liaisons to local agencies and interested parties regarding environmental and natural resources management concerns and issues relevant to implementation of the CCMP and the APNEP mission.

A Committee of Science and Technical Advisors ("**Science and Technical Advisory Committee**") for the Albemarle-Pamlico watershed shall be established to advise the Policy Board and agencies responsible for implementation of the CCMP on scientific and technical issues.

A Committee of Management Agency Representatives ("**Management Advisory Committee**") for the Albemarle-Pamlico watershed shall be established to facilitate and support the implementation and advancement of the CCMP management actions and the APNEP mission.

Section 2. Program Boundaries.

The boundaries of the Albemarle-Pamlico National Estuary Program are the geographic area of each of the following river basins as defined by the hydrologic boundaries ascribed to it by the North Carolina Department of Environment and Natural Resources:

1. Neuse (including areas of the White Oak River Basin that drain to Core and Bogue sounds),
2. Tar-Pamlico (including areas draining directly into the northern Pamlico Sound),
3. Roanoke (that portion of the basin below Lake Gaston dam),
4. Chowan (including the portion of the basin located in Virginia),

5. Pasquotank (including waters and areas that drain directly into the Albemarle, Currituck, Croatan, and Roanoke sounds, as well as that portion of the basin located in Virginia).

Section 3. Policy Board.

A. Membership.

1. The Policy Board will be broad-based and include the following:
   a. The Secretary of North Carolina Department of Environment and Natural Resources or designee;
   b. The Secretary of Natural Resources of the Commonwealth of Virginia or designee is invited to participate;
   c. The Executive Director of the N.C. Clean Water Management Trust Fund;
   d. One representative of Partnership for the Sounds;
   e. One representative of Cooperative Extension;
   f. One representative of Sea Grant;
   g. Two representatives from each of the Advisory Committees;
   h. One, who shall, at the time of appointment, be actively connected with higher education;
   i. One, who shall, at the time of appointment, be actively connected with local or regional planning;
   j. One, who shall, at the time of appointment, be actively connected with major business or industry;
   k. One, who shall, at the time of appointment, be actively connected with the commercial fishing or seafood industry;
   l. One, who shall, at the time of appointment, be actively connected with agriculture;
   m. One, who shall, at the time of appointment, be actively connected with forestry;
   n. One, who shall, at the time of appointment, be actively associated with a local, state, or national conservation organization;
   o. One who shall, at the time of appointment, be actively connected with or have experience in finance/banking;
   p. One, who shall, at the time of appointment, be actively connected with communication media;
   q. One at-large member;
   r. A representative of the U.S. Environmental Protection Agency – National Estuary Program is invited to participate as an ex-officio member.
2. Members must reside or have interests within the program boundaries.
3. The Secretary of the Department of Environment and Natural Resources shall appoint or invite the initial Policy Board membership.
4. Each member shall serve a three-year term, renewable once consecutively. The membership will have staggered appointments so that one-third of the membership can be reappointed each year.
5. Vacancies shall be filled by appointment or invitation from the remaining Board members as set forth in the Board's bylaws.
6. The Policy Board may expand its membership, as it deems necessary, upon two-thirds affirmative vote.

B. Duties.

1. The role of the Policy Board shall be to guide, evaluate, and support the CCMP implementation process and advancement of the CCMP and its management actions, and to ensure the highest level of collaboration, coordination, and cooperation among state and federal agencies, local governments, the public, and various interest groups.
2. The Policy Board shall consult the Advisory Committees and the Program Office for recommendations pertaining to implementation of CCMP management actions at the regional and local level, and the coordination and development of research and monitoring priorities.
3. The Policy Board shall advise the state, federal, and local agencies responsible for environmental and natural resources management about concerns and issues relevant to implementation of the CCMP.
4. The Policy Board shall make recommendations based on CCMP implementation progress and success, and shall identify and prioritize information needs as described in the CCMP.
5. The Policy Board shall evaluate the relevance of the CCMP and consult the Advisory Committees and the Program Office for recommendations on amending the CCMP to address new or emerging issues that may affect the significant natural resources of the Albemarle-Pamlico estuarine system.
6. The Policy Board shall be an advocate for the implementation of the CCMP and the APNEP mission and the APNEP.
7. The Policy Board, in cooperation with the Program Office, shall develop an annual report, budget, and work plan that addresses priorities for implementing and updating the CCMP.
8. The Policy Board shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.

C. Meetings.

1. The Policy Board shall meet at least two times each year or more frequently if deemed appropriate by the Chair or upon request by the Program Director.
2. Federal, state, and local agencies with environmental management responsibilities in the Albemarle-Pamlico watershed are invited to participate in meetings of the Policy Board.
3. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.

Section 4. Advisory Committees.

A. Citizen Advisory Committee

1. Membership.
   a. Citizen Advisory Committee (CAC) members must reside, or have interests, within the program boundaries of the Albemarle-Pamlico National Estuary Program.
   b. Membership shall include:
      (1) One representative of the Soil and Water Conservation Districts in North Carolina;
      (2) One representative of the Soil and Water Conservation Districts in Virginia is invited;

(3) Two representatives from non-governmental environmental conservation organizations;
(4) One representative of environmental education;
(5) One representative of K-12 education;
(6) One representative from industry or business;
(7) One representative of agriculture;
(8) One representative of commercial fishing or the seafood industry;
(9) One representative of forestry;
(10) One representative of county government;
(11) One representative of municipal or town government;
(12) One representative from each of the following:
(a) N.C. League of Municipalities, and
(b) N.C. Association of County Commissioners;
(13) One representative from each of the following is invited:
(a) Virginia Municipal League, and
(b) Virginia Association of Counties;
(14) One representative is invited to represent the State recognized tribal organizations from within the program boundaries in North Carolina;
(15) One representative is invited to represent the State recognized tribal organizations from within the program boundaries in Virginia; and
(16) Six at-large positions.

c. The CAC may expand its membership to include other interested parties as it deems necessary and as set forth in the committee's bylaws.

d. Members shall serve a three-year term, renewable once consecutively. The membership will have staggered appointments so that one-third of the membership can be reappointed each year.

e. The Director of the Albemarle-Pamlico National Estuary Program Office shall nominate the initial CAC membership to be approved by the Policy Board. In making his nominations, the Director shall, to the greatest extent possible, seek to ensure geographic, demographic, and social balance, and willingness to serve.

f. Vacancies shall be filled by appointment or invitation from the remaining CAC members as set forth in the committee's bylaws.

2. Duties.

a. The CAC shall be responsible for coordinating CCMP implementation strategies at a local level.

b. The CAC shall advise and consult with the Policy Board, Science and Technical Advisory Committee, Management Advisory Committee, the public and various interest groups, as well as local agencies within the Albemarle-Pamlico watershed regarding implementation of CCMP management actions and advancement of the CCMP at the local level.

c. The CAC shall be an advocate for the implementation of the CCMP and the APNEP mission and the APNEP at the local level.

d. The CAC will have no authority other than as an advisory body.

e. The CAC shall select two members to serve on the Policy Board.

f. The CAC shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.

3. Meetings.
   a. The CAC shall meet at least two times each year, or more frequently if deemed appropriate or upon request by the Policy Board or the Program Director.
   b. Federal, state, and local agencies with environmental management responsibilities in the Albemarle-Pamlico watershed are invited to participate in meetings of the CAC.
   c. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.

B. Science and Technical Advisory Committee.

1. Membership.
   a. The Science and Technical Advisory Committee (STAC) will be broad-based and should include scientists and researchers from local colleges, universities, and research institutions, as well as technical staff from federal, state, and local agencies, industry, and environmental organizations.
   b. All members will be expected to have an advanced degree (Master's or above) and/or extensive experience (at least 6 years) with expertise in scientific and technical fields germane to the mission of the APNEP.
   c. The Director of the Albemarle-Pamlico National Estuary Program Office shall nominate the initial STAC membership to be approved by the Policy Board. In making his nominations, the Director shall, to the greatest extent possible, seek to ensure broad-based science and technical representation for research, monitoring, and resource management issues germane to the Albemarle-Pamlico watershed.
   d. Members should have expertise in science and technology relevant to environment and natural resources management, including but not limited to: landscape ecology, terrestrial ecology, wetlands ecology, submerged aquatic ecology, marine biology, hydrology, remote sensing, ecological assessment, engineering, agricultural technologies, forest technologies, soil conservation, water quality modeling, environmental policy, economics, public policy, planning, spatial statistics, and law.
   e. Each member shall serve a three-year term, renewable once consecutively. The membership will have staggered appointments so that one-third of the membership can be reappointed each year.
   f. Vacancies shall be filled by appointment or invitation from the remaining committee members as set forth in the committee's bylaws.

2. Duties.
   a. The STAC shall be responsible for recommending research and monitoring activities and needs related to CCMP implementation or advancement to the Policy Board and the Program Office.
   b. The STAC shall advise and consult with the Policy Board, the public, and various interest groups, as well as local, state, and federal governments within program boundaries on scientific and technical issues affecting

implementation and advancement of the CCMP management actions. Members shall advise these groups of actions and information relevant to research and monitoring issues in the Albemarle-Pamlico watershed.

c. The STAC will have no authority other than as an advisory body.

d. The STAC will serve as a forum for the exchange of scientific information about the Albemarle-Pamlico estuarine system.

e. The STAC shall select two members to serve on the Policy Board.

f. The STAC shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.

3. Meetings.

a. The STAC shall meet at least two times each year, or more frequently if deemed appropriate, or upon request by the Policy Board or the Program Director.

b. Federal, state, and local agencies with environmental management responsibilities in the Albemarle-Pamlico watershed are invited to participate in meetings of STAC.

c. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.

C. Management Advisory Committee.

1. Membership.

a. The Management Advisory Committee (MAC) will be broad-based and should include representation from federal, state, and local agencies with environmental and natural resource management responsibilities within the Albemarle-Pamlico watershed.

b. The Director of the Albemarle-Pamlico National Estuary Program Office shall nominate the initial MAC membership to be approved by the Policy Board. In making appointments, the Policy Board shall, to the greatest extent possible, seek to ensure that appropriate management agencies are included.

c. The MAC may expand its membership as it deems necessary and as set forth in the committee's bylaws.

d. Vacancies shall be filled by appointment or invitation from the remaining committee as set forth in the committee's bylaws.

2. Duties.

a. The MAC shall be responsible for coordinating, supporting, and advocating CCMP implementation strategies at a state and federal agency level.

b. The MAC shall advise and consult with the Policy Board, CAC, and STAC on the implementation of CCMP management actions and advancement of the CCMP at the federal, state, and local agency level.

c. The MAC will have no authority other than as an advisory body.

d. The MAC shall select two members to serve on the Policy Board.

e. The MAC shall be responsible for determining its own rules of order, bylaws, chairmanship, attendance requirements, and other matters of protocol.

f. The MAC will serve as a forum for the exchange of management information about the Albemarle-Pamlico estuarine system.

3. Meetings.
   a. The MAC shall meet at least two times each year, or more frequently if deemed appropriate, or upon request by the Policy Board or Program Director.
   b. All meetings shall be open to the public and noticed in accordance with North Carolina's open meeting laws.

Section 5. Compensation, Per Diems, and Expenses.

Members of the APNEP Policy Board and Advisory Committees shall serve voluntarily and without compensation or per diems. Extraordinary expenses may be reimbursed subject to approval by the Program Director.

Section 6. Effect of Other Executive Orders.

All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded. This order specifically replaces Executive Orders #75 and #118.

This Order shall become effective immediately and remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 16th day of May 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 75
REESTABLISHING AND MODIFYING PROGRAMS ESTABLISHED UNDER THE HURRICANE FLOYD RECOVERY ACT OF 1999 (S.L. 1999-463 EXTRA SESSION) AND AMENDING EXECUTIVE ORDER #8

WHEREAS, Article III, Section 5(10) of the Constitution of North Carolina authorizes and empowers the Governor to make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration; and

WHEREAS, the North Carolina General Assembly enacted the Hurricane Recovery Act of 2005, S.L. No. 2005-1, to provide necessary and appropriate relief and assistance from the effects of the hurricanes and tropical storms that hit the State of North Carolina in 2004; and

WHEREAS, Section 5.1.(a) of the Hurricane Recovery Act of 2005, S.L. No. 2005-1, states, "The Governor shall reestablish and may modify, as necessary, all of the programs implemented as part of the Hurricane Floyd Recovery Act of 1999 under S.L. 1999-463 Extra Session and the Report of the House Appropriations Committee on Hurricane Floyd Recovery dated December 15, 1999, as amended by S.L. 1999-463 Extra Session. The Governor shall also establish new programs and expand or modify, as necessary, existing programs to provide necessary and appropriate relief and assistance from the effects of the hurricanes that hit the State in 2004;" and

WHEREAS, Section 4 of the Hurricane Floyd Recovery Act of 1999 (S.L. 1999-463 Extra Session) states "... every agency, as defined in G.S. 150B-2, may adopt temporary rules necessary to implement the provisions of this act;" and

WHEREAS, temporary rules for the Hurricane Floyd Recovery Act of 1999 (S.L. 1999-463 Extra Session) were adopted at 4 NCAC 19L.1901, which states "The North Carolina Department of Commerce will follow the administrative rules for the North Carolina Community Development Block Grant Program, 4 NCAC 19L. in administering the Hurricane Floyd Recovery Assistance appropriated by the General Assembly in Session Law 1999-463 Extra Session House Bill 2;" and

WHEREAS, 4 NCAC 19L.1901, states that the administrative rules for the 1999 Hurricane Floyd CHAF programs will be in effect until January 1, 2010;" and

WHEREAS, Executive Order No. 8 transferred the North Carolina Redevelopment Center to the North Carolina Department of Crime Control and Public Safety and transferred the Crisis Housing Assistance functions previously carried out by the Housing and Business Redevelopment Office and the Division of Community Assistance of the Department of Commerce to the North Carolina Redevelopment Center, except for the Affordable Rental Housing, Predevelopment, and Land Acquisition programs. These programs remain in the Department of Commerce; and

WHEREAS, Section 4 of Executive Order No. 8 states, "All rules, regulations, and policies promulgated by the Office of the Governor, Housing and Business Redevelopment Office, Division of Community Assistance, the Hurricane Floyd Redevelopment Center, and the Department of Commerce regarding Crisis Housing Assistance, shall continue to apply to the agencies transferred to the Department of Crime Control and Public Safety and shall remain in effect until such rules, regulations, and policies are amended or rescinded by the Secretary of the Department of Crime Control and Public Safety;" and

WHEREAS, the North Carolina Redevelopment Center of the North Carolina Department of Crime Control and Public Safety previously administered the following 1999 Hurricane Floyd CHAF programs: (1) State Acquisition and Relocation Funds (SARF) for Homeowners Assistance; (2) SARF for Renters Assistance; (3) Low-Income Home Repair & Rehabilitation; (4) Low-Income Home Replacement; (5) Infrastructure to Local Governments; and (6) Aid to Local Government; and

WHEREAS, the 2005 CHAF programs to be administered by the North Carolina Redevelopment Center will not differ substantially from their 1999 counterparts, except for changes in policy that will be addressed in the program guidelines and other program documentation.

NOW, THEREFORE it is hereby ordered that,

Section 1. Pursuant to Section 5.1.(a) of the Hurricane Recovery Act of 2005, the 1999 Hurricane Floyd Crisis Housing Assistance Funds (CHAF) program is hereby reestablished and modified to provide necessary and appropriate relief and assistance from the effects of the hurricanes and tropical storms that hit the State of North Carolina in 2004, by applying the rules of the 1999 Hurricane Floyd CHAF program at 4 NCAC 19L., to the 2005 CHAF program authorized by the Hurricane Recovery Act of 2005, S.L. No. 2005-1. The rules of the 1999 Hurricane Floyd CHAF program at 4 NCAC 19L. shall apply to the 2005 CHAF program authorized by the Hurricane Recovery Act of 2005, S.L. No. 2005-1.

Section 2. The North Carolina Redevelopment Center of the North Carolina Department of Crime Control and Public Safety will administer the following 2005 Hurricane Recovery Act CHAF programs: (1) State Acquisition and Relocation Funds (SARF) for Homeowners Assistance; (2) SARF for Renters Assistance; (3) Low-Income Home Repair & Rehabilitation;

(4) Low-Income Home Replacement; (5) Aid to Local Government; and (6) Grants to Successful SBA Home Loan Applicants.

Section 3. Subject to the amendments herein, all provisions of Executive Order No. 8 shall remain in full force and effect.

Section 4. This order shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 10th day of June 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 76
EXTENDING EXECUTIVE ORDER NO. 1

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

Executive Order No. 1 regarding the North Carolina Board of Ethics, previously extended by Executive Order No. 51, is hereby extended.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 16th day of June 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NUMBER 77
TEACHER ADVISORY COMMITTEE

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

There is hereby established a Teacher Advisory Committee ("Committee"). The Committee shall be composed of up to twenty members appointed by the Governor. The North Carolina Teacher of the Year shall serve *ex officio*. As determined by the Chairman of the Committee, one half of the current members' terms are extended for six months and the other half of the current members' terms are extended for one year. Hence forth, newly appointed members of the Committee shall serve two-year terms. Members may be reappointed. The Governor shall also appoint the Chair.

Section 2. Meetings.

(a) The Committee shall meet at least once each quarter and may hold special meetings at any time at the call of the Chair or the Governor (or his designee).

(b) The Committee must meet as a quorum. A quorum, for the purposes of this Order, is defined as a simple majority.

Section 3. Administration.

The Office of the Governor shall provide staff and administrative support services for the Committee.

Section 4. Duties.

(a) Advise the Governor as to the experiences and concerns of teachers in the classrooms of North Carolina.

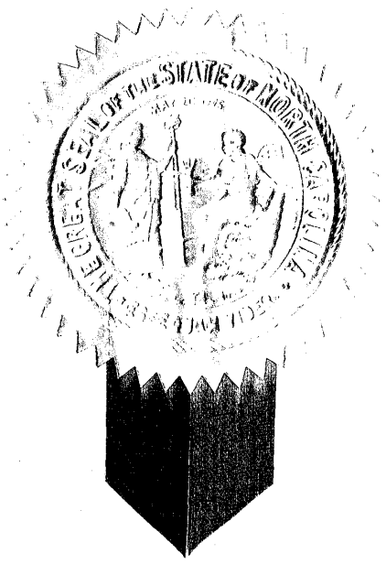
(b) Assist the Governor in his efforts to improve teaching and learning in North Carolina's schools.

(c) Recommend strategies for recruiting and retaining quality educators.

(d) Identify, recognize, and celebrate entrepreneurial schools and school systems in North Carolina.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 16th day of June 2005.



Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 78
PROCLAMATION OF STATE OF DISASTER
FOR THE TOWN OF CAROLINA SHORES, TOWN OF LELAND
AND CITY OF SOUTHPORT (BRUNSWICK COUNTY)

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§166A-4 and 14.288.1(10), exists in the State of North Carolina, specifically in the Town of Carolina Shores, Town of Leland, and City of Southport (Brunswick County) as a result of the damage done by Hurricanes Bonnie and Charley on August 12-15, 2004.

WHEREAS, on August 14, 2004, the Town of Carolina Shores, Town of Leland, and City of Southport (Brunswick County) proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria of a Type I disaster are met including the following: (1) Receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) The Town of Carolina Shores, Town of Leland, and City of Southport (Brunswick County) declared a local state of emergency pursuant to N.C.G.S. §166A-8 and N.C.G.S. §§14-288.12, 14-288.13 and 14-288.14, and forwarded a written copy of the declaration to the Governor; (3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or meets or exceeds the State infrastructure criteria set out in N.C.G.S. §166A-6.01(b)(2)a;

and, (4) A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

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

Section 1. Pursuant to N.C.G.S. §§166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for the Town of Carolina Shores, Town of Leland, and City of Southport (Brunswick County).

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced towns and city.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer of the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior

court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and state of emergency and Type I disaster proclamation for the Town of Carolina Shores, Town of Leland, and City of Southport (Brunswick County), issued on July 8, 2005, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 8th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 79
NORTH CAROLINA FILM COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED**:

Section 1. Establishment.

The North Carolina Film Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

a. Advise the Governor on matters that would enhance the likelihood of the film industry choosing North Carolina for filmmaking.

b. Advise the Secretary of Commerce and the Film Division in the Department of Commerce on film-making activities within North Carolina.

c. Serve as a forum for film-making concerns and recommendations relating to the film industry in North Carolina that would include, but not be all inclusive of, the following:

1. Compile a database registry of locations within North Carolina that would be potential sites for filmmaking;
2. Develop the financial capability of North Carolina to support projects with local financing of the film industry;
3. Develop a support network for production activities relating to the film industry;
4. Develop a manual for the use of local governments and municipalities detailing supportive activities that would facilitate filmmaking in their communities;

5. Assist in the support and coordination of the activities of local film commissions in North Carolina;
6. Provide advice on projects directly assigned by the Governor to the Council;
7. Assist with recruitment of the film industry to select North Carolina sites for filmmaking; and
8. Develop an annual report on the economic impact of the film-making industry in North Carolina, along with recommendations to increase the filmmaking activities within North Carolina.

Section 3. Membership.

The Council shall consist of no more than 25 voting members who shall be appointed by the Governor including:

a. representatives of the film industry within the state representing acting, production, directing, producing, and film studio management;

b. representatives of state or local government; and

c. citizens at-large members.

Section 4. Terms of Membership.

All members shall be appointed for a term of three years.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expense.

Members of the Council shall receive necessary travel and subsistence expenses, when available, from Department of Commerce funds, pursuant to N.C.G.S. 138-5.

Section 7. Officers.

The Chair and Vice Chair of the Council shall be appointed by the Governor and serve at the pleasure of the Governor. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

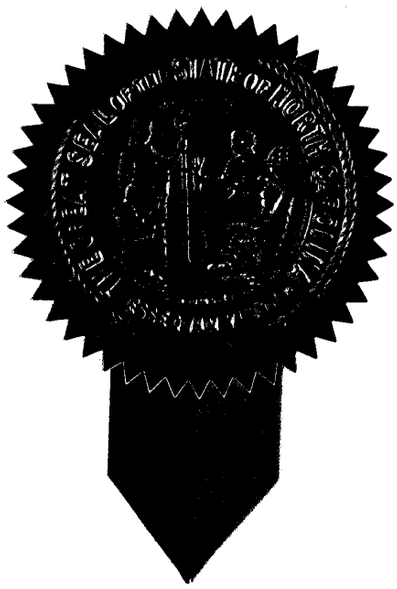
The Council shall meet at least three times yearly and at other times at the call of the Chair or upon written request a least ten of its members.

Section 9. Staff Assistance.

The Department of Commerce shall provide clerical support and other services required by the Council.

This Executive Order shall be effective immediately and rescinds all other executive orders.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 15th day of July 2005.



Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 5, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005; and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby **AUTHORIZE AND INSTRUCT**:

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 2+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

STATE OF NORTH CAROLINA
DEPARTMENT OF STATE,
RALEIGH, OCTOBER 3, 2005

I, ELAINE F. MARSHALL, Secretary of State of North Carolina hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions and executive orders of the Governor on file in the office of the Secretary of State.

Secretary of State

2019

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THE JOINT CONFERENCE COMMITTEE REPORT ON THE CONTINUATION, EXPANSION AND CAPITAL BUDGETS

August 8, 2005

Senate Bill 622

North Carolina General Assembly
2005 Session

Table of Contents

Budget Reform Statement	1
Adjusted Continuation Budget	2
Summary: General Fund Appropriations	4
Education	
Public Education	F 1
UNC System	F 9
Community Colleges	F 19
Health and Human Services	G 1
Natural and Economic Resources	
Agriculture and Consumer Services	H 1
Labor	H 5
Environment and Natural Resources	H 7
Commerce	H 16
Commerce-State Aid	H 21
NC Biotechnology Center	H 23
Rural Economic Development Center	H 24
Justice and Public Safety	
Judicial	I 1
Judicial – Indigent Defense	I 3
Justice	I 4
Juvenile Justice and Delinquency Prevention	I 7
Correction	I 10
Crime Control and Public Safety	I 14
General Government	
Administration	J 1
Cultural Resources	J 7
General Assembly	J 16
Housing Finance Agency	J 17
Insurance	J 18
Insurance –Workers' Compensation for Volunteer Firemen	J 21
Lieutenant Governor	J 22
Office of Administrative Hearings	J 23
Revenue	J 24
Secretary of State	J 31
State Board of Elections	J 33
State Budget and Management	J 34
State Budget and Management – Special Appropriations	J 35
State Controller	J 40
Treasurer	J 41
Treasurer – Retirement for Fire and Rescue Squad Workers	J 45
Transportation	K 1
Reserves, Debt Service, and Adjustments	L 1
Capital	M 1

Budget Reform Statement
General Fund Availability

		FY 2005-2006	FY 2006-2007
1	Unappropriated Balance Remaining from Previous Year	0	117,227,875
2	Projected Over Collections FY 2004-05	681,500,000	0
3	Projected Reversions FY 2004-05	115,000,000	0
4	Less Earmarkings of Year End Credit Balance		0
5	Savings Reserve Account	(199,125,000)	0
6	Repairs and Renovations	(125,000,000)	0
7	**Beginning Unreserved Credit Balance**	**472,375,000**	**117,227,875**
8			
9	**Revenues Based on Existing Tax Structure**	**15,417,300,000**	**16,077,600,000**
10			
11	**Non-tax Revenues**		
12	Investment Income	74,800,000	78,700,000
13	Judicial Fees	144,800,000	148,300,000
14	Disproportionate Share	100,000,000	100,000,000
15	Insurance	49,500,000	51,300,000
16	Other Non-Tax Revenues	138,000,000	151,300,000
17	Highway Trust Fund/Use Tax Reimbursement Transfer	252,558,117	252,663,009
18	Highway Fund Transfer	16,166,400	16,166,400
19	**Subtotal Non-tax Revenues**	**775,824,517**	**798,429,409**
20			
21	**Total General Fund Availability**	**16,665,499,517**	**16,993,257,284**
22			
23	**Adjustments to Availability: 2005 Session**		
24	Streamlined Sales Tax Changes	40,000,000	61,700,000
25	Maintain 4.5% Sales Tax Rate	417,100,000	462,700,000
26	Other Sales Tax Changes		
27	Apply Sales Tax to Candy	9,800,000	15,800,000
28	Apply General Sales Tax Rate to Cable	10,900,000	26,100,000
29	Exempt Potting Soil for Farmers	(200,000)	(300,000)
30	Tobacco Tax Rate Changes	118,800,000	189,400,000
31	Extend 8.25% Individual Income Tax Rate for 2 years	39,800,000	89,700,000
32	Continue Use Tax Line on Individual Returns	3,200,000	3,200,000
33	Conform Estate Tax to Federal Sunset	29,100,000	115,600,000
34	Film Industry Jobs Incentives	(3,500,000)	(3,500,000)
35	IRC Update -- Partial Conformance	(8,000,000)	(10,700,000)
36	Adjust Rates for Health Maintenance Organizations	0	14,300,000
37	Increase Earmarking for NC Grape Growers Council	(150,000)	(150,000)
38	Proceeds from the Sale of the Polk Building	4,977,781	0
39	Justice and Public Safety fees	17,028,271	20,428,271
40	Transfer from Tobacco Trust Fund	34,000,000	30,000,000
41	Transfers from Special Revenue and Other Funds	5,453,950	0
42	Reimburse Debt Service for Certain Capital Facilities and Land Acquisition per SL 2004-179	5,958,723	21,060,827
43	Transfer to Civil Penalty and Forfeiture Fund	(80,000,000)	(85,000,000)
44	Suspend Highway Fund Transfer	(16,166,400)	(16,166,400)
45	Adjust Transfer from Insurance Regulatory Fund	389,013	243,813
46	Adjust Transfer from Treasurer's Office	468,478	67,478
47	**Subtotal Adjustments to Availability: 2005 Session**	**628,959,816**	**934,483,989**
48			
49	**Revised General Fund Availability**	**17,294,459,333**	**17,927,741,273**
50			
51	**Less: General Fund Appropriations**		
52	SB 622 (2005 Appropriations Act)	(17,077,231,458)	(17,293,127,963)
53	G.S. 143-15.3B: Clean Water Management Trust Fund	(100,000,000)	(100,000,000)
54	**Total General Fund Appropriations 2005-07 Biennium**	**(17,177,231,458)**	**(17,393,127,963)**
55			
56	**Unappropriated Balance Remaining**	**117,227,875**	**534,613,310**

Adjusted Continuation Budget							
Restores Nonrecurring Reductions Directed by the 2003 General Assembly							
For Fiscal Years 2005-06 and 2006-07							
		FY 2005-2006	General	FY 2005-2006	FY 2006-2007	General	FY 2005-2006
Budget		Recommended	Assembly	Adjusted	Recommended	Assembly	Adjusted
Code	Function	Continuation	Adjustments	Continuation	Continuation	Adjustments	Continuation
	Education:						
13510	Public Schools	$6,585,323,929		$6,585,323,929	$6,701,093,652		$6,701,093,652
16800	Community Colleges						
	Scholarships from Escheats		$7,517,506			$7,517,506	
	Subtotal	$748,803,374	$7,517,506	$756,320,880	$748,813,317	$7,517,506	$756,330,823
160xx	University System						
	Scholarships from Escheats		$10,562,440			($2,625,120)	
	Subtotal	$1,832,929,378	$10,562,440	$1,843,491,818	$1,860,934,661	($2,625,120)	$1,858,309,541
16095	UNC Hospital	$39,627,760		$39,627,760	$39,627,760		$39,627,760
16011,12	UNC - GA Passthrough (16011,12)	$141,202,864		$141,202,864	$154,670,846		$154,670,846
	Total Education	$9,347,887,305	$18,079,946	$9,365,967,251	$9,505,140,236	$4,892,386	$9,510,032,622
	Health and Human Services:						
14410	Central Administration	$102,490,388		$102,490,388	$106,490,388		$106,490,388
14411	Aging	$29,495,139		$29,495,139	$29,495,139		$29,495,139
14420	Child Development	$267,350,017		$267,350,017	$267,356,799		$267,356,799
14424	Education Services	$33,852,267		$33,852,267	$34,281,895		$34,281,895
14430	Public Health	$135,567,174		$135,567,174	$137,060,438		$137,060,438
14440	Social Services	$182,316,068		$182,316,068	$185,306,068		$185,306,068
14445	Medical Assistance						
	Medicaid Trust Fund		$56,000,000			$36,000,000	
	Subtotal	$2,629,076,714	$56,000,000	$2,685,076,714	$2,958,257,177	$36,000,000	$2,994,257,177
14446	Child Health	$62,035,981		$62,035,981	$62,035,981		$62,035,981
14450	Services for the Blind	$9,843,201		$9,843,201	$9,962,624		$9,962,624
14460	Mental Health/DD/SAS						
	Central Office Contracts		$500,000			$119,781	
	Institutional Receipts		$2,550,000			$2,550,000	
	Subtotal	$592,325,908	$3,050,000	$595,375,908	$594,706,127	$2,669,781	$597,375,908
14470	Facility Services	$12,551,896		$12,551,896	$12,551,896		$12,551,896
14480	Vocational Rehabilitation	$41,755,526		$41,755,526	$42,142,193		$42,142,193
	Total Health & Human Services	$4,098,660,279	$59,050,000	$4,157,710,279	$4,439,646,725	$38,669,781	$4,478,316,506
	Natural and Economic Resources:						
13700	Agriculture & Consumer Services	$52,243,772		$52,243,772	$51,965,810		$51,965,810
14600	Commerce	$35,532,306		$35,532,306	$35,583,572		$35,583,572
14601	Commerce - State Aid	$25,108,087		$25,108,087	$25,108,087		$25,108,087
14300	Environment and Natural Resources	$167,189,338		$167,189,338	$168,187,593		$168,187,593
14301	Clean Water Mgt Trust Fund	$62,000,000	$38,000,000	$100,000,000	$62,000,000	$38,000,000	$100,000,000
13800	Labor	$14,198,496		$14,198,496	$14,213,868		$14,213,868
	Total Natural and Economic Resources	$356,271,999	$38,000,000	$394,271,999	$357,058,930	$38,000,000	$395,058,930
	Justice and Public Safety:						
14500	Correction	$1,045,627,365		$1,045,627,365	$1,060,627,365		$1,060,627,365
14900	Crime Control & Public Safety						
	VIPER		($500,000)			($500,000)	
	Caldwell County Armory		($975,000)			($975,000)	
	National Guard Family Assistance		($250,000)			($250,000)	
	Victims' Compensation		($2,500,000)			($2,500,000)	
	Subtotal	$34,086,632	($4,225,000)	$29,861,632	$34,186,632	($4,225,000)	$29,961,632
12000	Judicial						
	District Court Tape Recorders		($600,000)			($600,000)	
	Subtotal	$342,043,618	($600,000)	$341,443,618	$345,843,618	($600,000)	$345,243,618
12001	Judicial - Indigent Defense	$96,688,190		$96,688,190	$91,688,190		$91,688,190
13600	Justice	$78,155,004		$78,155,004	$78,855,004		$78,855,004
14060	Juvenile Justice	$139,857,825		$139,857,825	$140,157,825		$140,157,825
	Total Justice and Public Safety	$1,736,458,634	($4,825,000)	$1,731,633,634	$1,751,358,634	($4,825,000)	$1,746,533,634

Adjusted Continuation Budget							
Restores Nonrecurring Reductions Directed by the 2003 General Assembly							
For Fiscal Years 2005-06 and 2006-07							
		FY 2005-2006	General	FY 2005-2006	FY 2006-2007	General	FY 2005-2006
Budget		Recommended	Assembly	Adjusted	Recommended	Assembly	Adjusted
Code	Function	Continuation	Adjustments	Continuation	Continuation	Adjustments	Continuation
	General Government:						
14100	Administration	$60,053,752		$60,053,752	$61,483,537		$61,483,537
13300	State Auditor	$10,850,737		$10,850,737	$10,840,918		$10,840,918
14800	Cultural Resources	$61,114,752		$61,114,752	$59,597,482		$59,597,482
14802	Cultural Resources - Roanoke Island	$1,783,374		$1,783,374	$1,783,374		$1,783,374
11000	General Assembly						
	General Assembly Reserve		$880,000			$880,000	
	Subtotal	$42,984,588	$880,000	$43,864,588	$46,085,432	$880,000	$46,965,432
13000	Governor's Office	$5,324,590		$5,324,590	$5,344,528		$5,344,528
13010	NC Housing Finance	$4,750,945		$4,750,945	$4,750,945		$4,750,945
13900	Insurance	$27,831,701		$27,831,701	$27,866,769		$27,866,769
13901	Insurance - Worker's Fund	$4,500,000		$4,500,000	$4,500,000		$4,500,000
13100	Lieutenant Governor's Office	$690,697		$690,697	$690,697		$690,697
18210	Office of Administrative Hearings	$2,976,210		$2,976,210	$2,967,712		$2,967,712
14700	Revenue						
	Examination and Collection		$3,664,145			$3,664,145	
	Subtotal	$79,153,299	$3,664,145	$82,817,444	$79,296,299	$3,664,145	$82,960,444
13200	Secretary of State	$8,568,943		$8,568,943	$8,549,857		$8,549,857
18025	State Board of Elections	$4,957,543		$4,957,543	$4,959,307		$4,959,307
13005	State Budget and Management (OSBM)						
	Computer Equipment		($10,000)			($10,000)	
	Subtotal	$4,914,371	($10,000)	$4,904,371	$4,918,931	($10,000)	$4,908,931
13085	OSBM - Special Appropriations	$3,180,000		$3,180,000	$3,180,000		$3,180,000
14160	Office of State Controller	$9,960,527		$9,960,527	$9,966,970		$9,966,970
13410	State Treasurer	$8,222,117		$8,222,117	$8,228,365		$8,228,365
13412	State Treasurer - Retirement / Benefits	$8,146,179		$8,146,179	$8,146,179		$8,146,179
	Total General Government	$349,964,325	$4,534,145	$354,498,470	$353,157,302	$4,534,145	$357,691,447
	Transportation:						
14222	Transportation	$12,027,377		$12,027,377			
84210	Highway Fund						
	Death Benefit Plan		$589,000			$589,000	
	Subtotal	$1,398,569,973	$589,000	$1,399,158,973	$1,401,351,921	$589,000	$1,401,940,921
	Transportation-General Fund	$12,027,377		$12,027,377	$12,945,066		$12,945,066
	Transportation-Highway Fund	$1,398,569,973	$589,000	$1,399,158,973	$1,401,351,921	$589,000	$1,401,940,921
	Total General Fund Agency	$15,901,269,919	$114,839,091	$16,016,109,010	$16,419,306,893	$81,271,312	$16,500,578,205
	Debt Service:						
19420	General Debt Service	$485,185,962		$485,185,962	$615,917,453		$615,917,453
19425	Federal Reimbursement	$1,616,380		$1,616,380	$1,616,380		$1,616,380
	Total Debt Service	$486,802,342		$486,802,342	$617,533,833		$617,533,833
	Total Agency plus Debt Service	$16,388,072,261	$114,839,091	$16,502,911,352	$17,036,840,726	$81,271,312	$17,118,112,038
	Reserves & Adjustments:						
19001	Contingency and Emergency Reserve	$5,000,000		$5,000,000	$5,000,000		$5,000,000
19004	Salary Adjustment Reserve	$9,000,000		$9,000,000	$9,000,000		$9,000,000
19013	Job Development Incentive Grants	$4,500,000		$4,500,000	$4,500,000		$4,500,000
190xx	Death/Disability Benefit Plan	$0	$18,230,100	$18,230,100	$0	$18,230,100	$18,230,100
	Total Reserves & Adjustments	$18,500,000	$18,230,100	$36,730,100	$18,500,000	$18,230,100	$36,730,100
	Total General Fund Budget	$16,406,572,261	$133,069,191	$16,539,641,452	$17,055,340,726	$99,501,412	$17,154,842,138
	Total Highway Fund Budget	$1,398,569,973	$589,000	$1,399,158,973	$1,401,351,921	$589,000	$1,401,940,921

SUMMARY:

GENERAL FUND APPROPRIATIONS

2026

Summary of General Fund Appropriations Fiscal Year 2005-2006 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2005-06	Adjustments	Adjustments	Changes	Changes	2005-06
Education:						
Community Colleges	756,320,880	7,140,063	24,225,000	31,365,063	5.00	787,685,943
Public Education	6,585,323,929	(80,645,484)	103,320,500	22,675,016	3.00	6,607,998,945
University System	2,024,322,442	55,618,372	6,112,076	61,730,448	546.20	2,086,052,890
Total Education	**9,365,967,251**	**(17,887,049)**	**133,657,576**	**115,770,527**	**554.20**	**9,481,737,778**
Health and Human Services:						
Office of the Secretary	102,490,388	13,390,531	(2,025,000)	11,365,531	5.00	113,855,919
Aging Division	29,495,139	0	480,500	480,500		29,975,639
Blind and Deaf / Hard of Hearing Services	9,843,201	(281,404)	115,000	(166,404)		9,676,797
Child Development	267,350,017	0	1,000,000	1,000,000		268,350,017
Education Services	33,852,267	0	0	0		33,852,267
Facility Services	12,551,896	1,151,351	(94,409)	1,056,942	44.50	13,608,838
Medical Assistance	2,685,076,714	(105,304,660)	(70,000,000)	(175,304,660)	3.00	2,509,772,054
Mental Health	595,375,908	5,180,747	2,758,500	7,939,247		603,315,155
NC Health Choice	62,035,981	6,133,784	0	6,133,784		68,169,765
Public Health	135,567,174	12,354,058	4,470,000	16,824,058	26.00	152,391,232
Social Services	182,316,068	5,233,625	963,000	6,196,625	8.00	188,512,693
Vocational Rehabilitation	41,755,526	0	0	0		41,755,526
Total Health and Human Services	**4,157,710,279**	**(62,141,968)**	**(62,332,409)**	**(124,474,377)**	**86.50**	**4,033,235,902**
Justice and Public Safety:						
Correction	1,045,627,365	(12,310,691)	(3,392,253)	(15,702,944)	-13.00	1,029,924,421
Crime Control & Public Safety	29,861,632	5,172,302	(240,000)	4,932,302	-1.00	34,793,934
Judicial Department	341,443,618	(662,858)	1,824,000	1,161,142	4.00	342,604,760
Judicial - Indigent Defense	96,688,190	(2,650,217)	0	(2,650,217)		94,037,973
Justice	78,155,004	(656,217)	(176,220)	(832,437)	15.00	77,322,567
Juvenile Justice & Delinquency Prevention	139,857,825	(1,284,659)	1,804,500	519,841	-46.00	140,377,666
Total Justice and Public Safety	**1,731,633,634**	**(12,392,340)**	**(179,973)**	**(12,572,313)**	**-41.00**	**1,719,061,321**

Summary of General Fund Appropriations Fiscal Year 2005-2006 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2005-06	Adjustments	Adjustments	Changes	Changes	2005-06
Natural And Economic Resources:						
Agriculture and Consumer Services	52,243,772	(932,926)	730,000	(202,926)	1.00	52,040,846
Commerce	35,532,306	724,693	13,430,000	14,154,693		49,686,999
Commerce - State Aid	11,222,085	500,000	14,790,000	15,290,000		26,512,085
Environment and Natural Resources	167,189,338	(675,770)	10,683,551	10,007,781	28.60	177,197,119
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	0	0		100,000,000
Labor	14,198,496	221,057	0	221,057	3.50	14,419,553
NC Biotechnology Center	9,083,395	1,500,000	1,500,000	3,000,000		12,083,395
Rural Economic Development Center	4,802,607	20,000,000	475,000	20,475,000		25,277,607
Total Natural and Economic Resources	**394,271,999**	**21,337,054**	**41,608,551**	**62,945,605**	**33.10**	**457,217,604**
General Government:						
Administration	60,053,752	(1,476,791)	3,462,300	1,985,509	6.00	62,039,261
Auditor	10,850,737	0	0	0		10,850,737
Cultural Resources	61,114,752	3,360,462	8,958,300	12,318,762	8.00	73,433,514
Cultural Resources - Roanoke Island	1,783,374	0	0	0		1,783,374
General Assembly	43,864,588	0	(930,000)	(930,000)		42,934,588
Governor	5,324,590	0	0	0		5,324,590
Housing Finance Agency	4,750,945	0	5,700,000	5,700,000		10,450,945
Insurance	27,831,701	243,813	145,200	389,013	3.00	28,220,714
Insurance - Worker's Compensation Fund	4,500,000	0	(2,500,000)	(2,500,000)		2,000,000
Lieutenant Governor	690,697	62,340	1,700	64,040	1.25	754,737
Office of Administrative Hearings	2,976,210	2,000	9,200	11,200		2,987,410
Revenue	82,817,444	(2,330,645)	960,676	(1,369,969)	16.00	81,447,475
Secretary of State	8,568,943	215,075	150,045	365,120		8,934,063
State Board of Elections	4,957,543	110,000	40,000	150,000	1.00	5,107,543
State Budget and Management	4,904,371	112,864	2,500	115,364	2.00	5,019,735
State Budget and Management -- Special	3,180,000	1,931,429	6,247,000	8,178,429		11,358,429
State Controller	9,960,527	77,541	5,200	82,741	1.00	10,043,268
Treasurer - Operations	8,222,117	67,478	401,000	468,478	1.00	8,690,595
Treasurer - Retirement / Benefits	8,146,179	505,278	0	505,278		8,651,457
Total General Government	**354,498,470**	**2,880,844**	**22,653,121**	**25,533,965**	**39.25**	**380,032,435**

Summary of General Fund Appropriations Fiscal Year 2005-2006 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2005-06	Adjustments	Adjustments	Changes	Changes	2005-06
Transportation	**12,027,377**	**(11,284,198)**	**(543,179)**	**(11,827,377)**	**0.00**	**200,000**
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	485,185,962	4,358,249	0	4,358,249		489,544,211
Federal Reimbursement	1,616,380	0	0	0		1,616,380
Subtotal Debt Service	**486,802,342**	**4,358,249**	**0**	**4,358,249**		**491,160,591**
Statewide Reserves:						
Compensation Increases		235,181,327	8,000,000	243,181,327		243,181,327
Salary Adjustment Fund: 2005-07 Biennium	4,500,000	0	0	0		4,500,000
Salary Adjustment Fund: 2004-05 Fiscal Year	4,500,000			0		4,500,000
Teachers' and State Employees' Retirement Contribution		13,810,800	0	13,810,800		13,810,800
Retirement System Payback		0	25,000,000	25,000,000		25,000,000
Death Benefit Trust	12,000,000	899,200	0	899,200		12,899,200
Disability Income Plan	6,230,100	356,400	0	356,400		6,586,500
State Health Plan	0	108,648,000	0	108,648,000		108,648,000
Contingency and Emergency Fund	5,000,000	0	0	0		5,000,000
Information Technology Rate Adjustments		(2,300,000)	0	(2,300,000)		(2,300,000)
Information Technology Fund		8,025,000	16,350,000	24,375,000		24,375,000
MH/DD/SAS Trust Fund		0	10,000,000	10,000,000		10,000,000
Health and Wellness Trust Fund		0	10,000,000	10,000,000		10,000,000
Job Development Investment Grants (JDIG)	4,500,000	4,500,000	0	4,500,000		9,000,000
Increased Fuel Costs		0	3,000,000	3,000,000		3,000,000
Reserve for Contingent Appropriations		85,000,000	0	85,000,000		85,000,000
Subtotal Statewide Reserves	**36,730,100**	**454,120,727**	**72,350,000**	**526,470,727**		**563,200,827**
Total Reserves and Debt Service	**523,532,442**	**458,478,976**	**72,350,000**	**530,828,976**		**1,054,361,418**
Total General Fund for Operations	**16,539,641,452**	**378,991,319**	**207,213,687**	**586,205,006**	**672.05**	**17,125,846,458**

Summary of General Fund Appropriations Fiscal Year 2005-2006 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2005-06	Adjustments	Adjustments	Changes	Changes	2005-06
Capital Improvements						
Water Resources Development Projects	0	0	15,260,000	15,260,000		15,260,000
Other Capital Improvements	0	0	36,125,000	36,125,000		36,125,000
Total Capital Improvements	**0**	**0**	**51,385,000**	**51,385,000**		**51,385,000**
Total General Fund Budget	**16,539,641,452**	**378,991,319**	**258,598,687**	**637,590,006**	**672.05**	**17,177,231,458**

Summary of General Fund Appropriations Fiscal Year 2006-2007 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2006-07	Adjustments	Adjustments	Changes	Changes	2006-07
Education:						
Community Colleges	756,330,823	7,265,063	3,700,000	10,965,063	5.00	767,295,886
Public Education	6,701,093,652	(121,286,555)	0	(121,286,555)	3.00	6,579,807,097
University System	2,052,608,147	66,788,934	0	66,788,934	546.20	2,119,397,081
Total Education	**9,510,032,622**	**(47,232,558)**	**3,700,000**	**(43,532,558)**	**554.20**	**9,466,500,064**
Health and Human Services:						
Office of the Secretary	106,490,388	13,390,531	(1,000,000)	12,390,531	5.00	118,880,919
Aging Division	29,495,139	0	0	0		29,495,139
Blind and Deaf / Hard of Hearing Services	9,962,624	(281,404)	0	(281,404)		9,681,220
Child Development	267,356,799	0	0	0		267,356,799
Education Services	34,281,895	0	0	0		34,281,895
Facility Services	12,551,896	3,360,370	47,200	3,407,570	78.50	15,959,466
Medical Assistance	2,994,257,177	(193,048,018)	(50,000,000)	(243,048,018)	3.00	2,751,209,159
Mental Health	597,375,908	5,180,747	0	5,180,747		602,556,655
NC Health Choice	62,035,981	(10,153,079)	0	(10,153,079)		51,882,902
Public Health	137,060,438	12,354,058	1,400,000	13,754,058	25.00	150,814,496
Social Services	185,306,068	5,373,217	0	5,373,217	8.00	190,679,285
Vocational Rehabilitation	42,142,193	0	0	0		42,142,193
Total Health and Human Services	**4,478,316,506**	**(163,823,578)**	**(49,552,800)**	**(213,376,378)**	**119.50**	**4,264,940,128**
Justice and Public Safety:						
Correction	1,060,627,365	(12,134,863)	0	(12,134,863)	-13.00	1,048,492,502
Crime Control & Public Safety	29,961,632	5,191,856	0	5,191,856	-1.00	35,153,488
Judicial Department	345,243,618	482,964	0	482,964	9.00	345,726,582
Judicial - Indigent Defense	91,688,190	(3,039,776)	0	(3,039,776)		88,648,414
Justice	78,855,004	(190,973)	33,240	(157,733)	15.00	78,697,271
Juvenile Justice & Delinquency Prevention	140,157,825	(1,284,659)	0	(1,284,659)	-46.00	138,873,166
Total Justice and Public Safety	**1,746,533,634**	**(10,975,451)**	**33,240**	**(10,942,211)**	**-36.00**	**1,735,591,423**

Summary of General Fund Appropriations Fiscal Year 2006-2007 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2006-07	Adjustments	Adjustments	Changes	Changes	2006-07
Natural And Economic Resources:						
Agriculture and Consumer Services	51,965,810	(932,926)	0	(932,926)	1.00	51,032,884
Commerce	35,583,572	644,693	500,000	1,144,693		36,728,265
Commerce - State Aid	11,222,085	500,000	0	500,000		11,722,085
Environment and Natural Resources	168,187,593	(736,504)	0	(736,504)	28.60	167,451,089
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	0	0		100,000,000
Labor	14,213,868	221,057	0	221,057	3.50	14,434,925
NC Biotechnology Center	9,083,395	1,500,000	0	1,500,000		10,583,395
Rural Economic Development Center	4,802,607	20,000,000	250,000	20,250,000		25,052,607
Total Natural and Economic Resources	**395,058,930**	**21,196,320**	**750,000**	**21,946,320**	**33.10**	**417,005,250**
General Government:						
Administration	61,483,537	(2,665,064)	0	(2,665,064)	6.00	58,818,473
Auditor	10,840,918	0	0	0		10,840,918
Cultural Resources	59,597,482	3,319,665	0	3,319,665	8.00	62,917,147
Cultural Resources - Roanoke Island	1,783,374	0	0	0		1,783,374
General Assembly	46,965,432	0	0	0		46,965,432
Governor	5,344,528	0	0	0		5,344,528
Housing Finance Agency	4,750,945	0	0	0		4,750,945
Insurance	27,866,769	243,813	0	243,813	3.00	28,110,582
Insurance - Worker's Compensation Fund	4,500,000	0	0	0		4,500,000
Lieutenant Governor	690,697	62,340	0	62,340	1.25	753,037
Office of Administrative Hearings	2,967,712	2,000	0	2,000		2,969,712
Revenue	82,960,444	(2,330,194)	0	(2,330,194)	16.00	80,630,250
Secretary of State	8,549,857	604,450	115,326	719,776	9.00	9,269,633
State Board of Elections	4,959,307	110,000	0	110,000	1.00	5,069,307
State Budget and Management	4,908,931	112,864	0	112,864	2.00	5,021,795
State Budget and Management -- Special	3,180,000	1,931,429	0	1,931,429		5,111,429
State Controller	9,966,970	77,541	0	77,541	1.00	10,044,511
Treasurer - Operations	8,228,365	67,478	0	67,478	1.00	8,295,843
Treasurer - Retirement / Benefits	8,146,179	505,278	0	505,278		8,651,457
Total General Government	**357,691,447**	**2,041,600**	**115,326**	**2,156,926**	**48.25**	**359,848,373**

Summary of General Fund Appropriations Fiscal Year 2006-2007 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2006-07	Adjustments	Adjustments	Changes	Changes	2006-07
Transportation	**12,945,066**	**(12,945,066)**	**0**	**(12,945,066)**	**0.00**	**0**
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	615,917,453	3,373,687	0	3,373,687		619,291,140
Federal Reimbursement	1,616,380	0	0	0		1,616,380
Subtotal Debt Service	**617,533,833**	**3,373,687**	**0**	**3,373,687**	**0.00**	**620,907,520**
Statewide Reserves:						
Compensation Increases		235,185,705	0	235,185,705		235,185,705
Salary Adjustment Fund: 2005-07 Biennium	4,500,000	0	0	0		4,500,000
Salary Adjustment Fund: 2004-05 Fiscal Year	4,500,000			0		4,500,000
Teachers' and State Employees' Retirement Contribution		13,810,800	0	13,810,800		13,810,800
Retirement System Payback		0	0	0		0
Death Benefit Trust	12,000,000	899,200	0	899,200		12,899,200
Disability Income Plan	6,230,100	356,400	0	356,400		6,586,500
State Health Plan		142,728,000	0	142,728,000		142,728,000
Contingency and Emergency Fund	5,000,000	0	0	0		5,000,000
Information Technology Rate Adjustments		(2,300,000)	0	(2,300,000)		(2,300,000)
Information Technology Fund		8,025,000	0	8,025,000		8,025,000
MH/DD/SAS Trust Fund		0	0	0		0
Health and Wellness Trust Fund		0	0	0		0
Job Development Investment Grants (JDIG)	4,500,000	7,900,000	0	7,900,000		12,400,000
Increased Fuel Costs		0	0	0		0
Reserve for Contingent Appropriations		85,000,000	0	85,000,000		85,000,000
Subtotal Statewide Reserves	**36,730,100**	**491,605,105**	**0**	**491,605,105**		**528,335,205**
Total Reserves and Debt Service	**654,263,933**	**494,978,792**	**0**	**494,978,792**		**1,149,242,725**
Total General Fund for Operations	**17,154,842,138**	**283,240,059**	**(44,954,234)**	**238,285,825**		**17,393,127,963**

Summary of General Fund Appropriations Fiscal Year 2006-2007 2005 Legislative Session						
	Adjusted	Legislative Adjustments				Revised
	Continuation Budget	Recurring	Nonrecurring	Net	FTE	Appropriation
	2006-07	Adjustments	Adjustments	Changes	Changes	2006-07
Capital Improvements						
Water Resources Development Projects	0	0	0	0		0
Other Capital Improvements	0	0	0	0		0
Total Capital Improvements	**0**	**0**	**0**	**0**		**0**
Total General Fund Budget	**17,154,842,138**	**283,240,059**	**(44,954,234)**	**238,285,825**	**719.05**	**17,393,127,963**

EDUCATION
Section F

Public Education

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$6,585,323,929**		**$6,701,093,652**	
Legislative Changes				
A. Updated Projections				
1 Average Daily Membership (ADM) Revise projected increase in ADM for FY 2005-06 to reflect 2,338 more students than originally projected. Dollar amount of adjustment includes increases to all position, dollar, and categorical allotments. Total funded ADM for FY 2005-06 is 1,397,372, an increase of 28,309. Due to upward adjustment of 6,439 in ninth grade ADM, receipts from Highway Fund budgeted for Driver's Education would increase by $129,405 in 2005-06 and $255,618 in 2006-07 if funding factor remained $245.55 per ADM for 132,780 total ADM. Reduction in funding factor to $240 per ADM (see page K3, item 12) results in net reduction of $607,524 in FY 2005-06 and $615,156 in FY 2006-07 from anticipated receipts. Total budgeted receipts from Highway Fund in FY 2005-06 will be $31,867,200.	$9,402,812	R	$6,660,059	R
2 Budgeted Average Salary Revise budgeted funding for certified personnel salaries based on actual salary data from December 2004. Adjustment does not reduce any salary paid to certified personnel.	($23,642,099)	R	($23,965,417)	R
3 Exceptional Children Revise budgeted funding for children with special needs to reflect actual April 1, 2005 headcount. Continuation budget was based on projected headcount. Adjustment does not reduce funding per child.	($3,969,553)	R	($3,969,553)	R
4 High Priority Schools Revise funds appropriated for High Priority Schools based on projection of fewer participating High Priority Schools. In 2005-06, High Priority Schools will have the option of removing themselves from high priority status.	($400,000)	R	($400,000)	R
B. Continuation Budget Adjustments				
5 Central Office Administration Reduce dollar allotment for Central Office Administration by 0.5% Resulting total allotment in FY 2005-06 is $101,494,560.	($510,023)	R	($510,023)	R

	FY 05-06		FY 06-07	
6 School Building Administration Allot assistant principal positions on the basis of one 10-month position per 800 ADM. Resulting total allotment for assistant principals in FY 2005-06 is $80,538,079.	($5,038,433)	R	($5,038,433)	R
7 At-Risk Student Services/Alternative Schools Reduce At-Risk Student Services/Alternative Schools supplemental funding to reflect transfer of funds to the Department of Juvenile Justice and Delinquency Prevention (DJJDP) for contract educational services provided to school-age youth by Eckerd Youth Alternatives Therapeutic Camps.	($1,600,000)	R	($1,600,000)	R
8 School Bus Replacement Provide funds to meet outstanding lease purchase payment obligations, and $10 million for new lease purchases (approximately 476 new buses). Resulting total allotment in FY 2005-06 is $47,190,642.	($7,915,450)	R	($7,915,450)	R
9 Department of Public Instruction (DPI) Reduce funds for the Department of Public Instruction by 2%	($598,666)	R	($598,666)	R
10 ADM Contingency Reserve Reduce ADM Contingency Reserve. Resulting appropriation is $5,000,000.	($2,000,000)	R	($2,000,000)	R
11 Driver's Education Reduce receipts from Highway Fund budgeted for Driver's Education by $607,524 to reflect adjustment of funding factor from $245.55 to $240 per 9th grade ADM of 132,780. Resulting total allotment in FY 2005-06 is $31,867,200.				
C. Reductions: Pass-Through Funds				
12 ExplorNet Reduce pass-through funding to non-profit program by 25% LEAs may contract for services provided by this organization using various other allotments that may be expended for professional development.	($100,000)	R	($100,000)	R
13 NC Network Reduce pass-through funding to non-profit program by 25% LEAs may contract for services provided by this organization using various other allotments that may be expended for professional development.	($70,875)	R	($70,875)	R
14 Partnership for Excellence Eliminate pass-through funding to non-profit program by 25% LEAs may contract for services provided by this organization using various other allotments that may be expended for professional development.	($12,500)	R	($12,500)	R

	FY 05-06		FY 06-07	
D. Increased Receipts				
15 Sales Tax Refundable to LEAs Redirect estimated State sales tax refundable to LEAs to the State Public School Fund for allotment through State position, dollar, and categorical allotments.			($33,300,000)	R
16 Transfer from Civil Penalties and Forfeitures Fund Deposit $18,000,000 in estimated revenues of the State Civil Penalties and Forfeitures Fund (CPFF) into the School Technology Fund in FY 2005-06 and in FY 2006-07. Deposit $102,500,000 in estimated CPFF revenues in FY 2005-06 and $107,500,000 in FY 2006-07 to the State Public School Fund for allotment to the LEAs on a per pupil basis.				
17 Budget Receipts from Civil Penalties & Forfeitures Fund Budget increased receipts of $102,500,000 in FY 2005-06 and $107,500,000 in FY 2006-07 from Civil Penalties & Forfeitures fund. Adjust General Fund appropriations accordingly.	($102,500,000)	R	($107,500,000)	R
E. Expansion: State Public School Fund				
18 Low Wealth Supplemental Funding Provide additional funding for LEAs located in counties with below State average ability to raise local revenue for public schools.	$20,000,000	R	$20,000,000	R
19 Disadvantaged Student Supplemental Funding (DSSF) Continue funding at levels allotted in FY 2004-05 for the sixteen pilot LEAs that have previously received DSSF allotments. LEAs are encouraged to use funds to reduce class size and/or hire additional instructional support personnel, such as counselors, social workers, and nurses.	$22,500,000	R	$22,500,000	R
20 Evaluate Effectiveness of DSSF and Low Wealth Initiatives Provide funds for evaluation of both (i) the extent to which LEAs use DSSF and Low Wealth supplemental allotments to improve outcomes for students at-risk of school failure, and (ii) the extent to which DPI supports the LEAs in using DSSF and other supplemental allotments efficiently and effectively.	$150,000	NR		
21 ABC Bonuses Fund ABC bonuses for schools that met or exceeded expected growth in the 2004-05 school year.	$100,000,000	NR		
22 Learn and Earn Initiative Expand the Learn and Earn High School Workforce Development Initiative into an additional ten high schools (bringing the total to 15). Provide planning grants to twenty additional high schools. This funding is the second installment toward a $10 million State match required to activate a $10 million commitment from the Gates Foundation.	$3,247,426 $917,500 3.00	R NR	$3,247,426 3.00	R

	FY 05-06		FY 06-07	
23 Small Specialty High Schools Pilot Program Fund additional principals, guidance counselors, and clerical staff at new "small specialty schools" within existing high schools at eight pilot sites. Allot each new "school within a school" the dollar equivalent of one principal position, one guidance counselor position, and two clerical positions.	$1,446,877	R	$1,446,877	R
24 School-Based Child and Family Support Teams Provide funds to establish school-based child and family support teams that will support children at-risk of school failure by coordinating services among educational and human service agencies working with the children and their families.	$8,500,000	R	$8,500,000	R
25 Small County Supplemental Funding Expand small county supplemental funding allotment to meet requirements of the amended formula.	$750,000	NR		
26 Virtual High School Provide funds to the State Board of Education for establishment and implementation of a pilot virtual high school during the 2005-2006 school year.	$150,000	R	$150,000	R
27 Education Value Added Assessment System (EVAAS) Provide funds to LEAs to purchase licenses for EVAAS diagnostic software. The State Board shall identify up to 20 LEAs to receive funding in FY 2005-06 based on criteria that shall include (i) identified need, (ii) readiness, and (iii) county wealth, as defined in the Low Wealth Supplemental Funding formula. The LEAs shall be distributed geographically. It is the goal of the General Assembly to provide funds in future years so that every LEA may purchase these licenses.	$500,000	R	$500,000	R
F. Expansion: Pass-Through Funds				
28 Teaching Fellows Scholarships Fund 100 additional Teaching Fellows Scholarships.	$650,000	R	$1,300,000	R
29 Communities in Schools Provide additional pass-through funding to non-profit program	$500,000	NR		
30 A+ Schools Provide funding to support non-profit program that assists schools in implementing comprehensive school reform by integrating arts into the curriculum	$100,000	R	$100,000	R
31 Center for 21st Century Skills Provide funds to the State Board of Education for establishment of the Center for 21st Century Skills. The State Board will transfer funds to the Office of the Governor for this purpose.	$250,000	R	$250,000	R

	FY 05-06		FY 06-07	
32 Teacher Working Conditions Survey Provide funds to the State Board of Education for administration of the teacher working conditions survey formerly administered and funded out of the Office of the Governor. Provide $100,000 to NC Network.	$215,000	R	$290,000	R
33 SAS in Schools Fund Statewide license for SAS in Schools, an instructional resource that will be made available to all NC teachers on-line through NC WISEOWL.	$500,000	R	$500,000	R
34 Regional Education Networks Provide funds to the North Carolina Rural Economic Development Center and the e-NC Authority for a feasibility study on developing regional education networks that are centrally managed to provide and sustain broadband connectivity to individual students and teachers in schools, community colleges, and universities. In conducting the study, the Rural Economic Development Center and e-NC Authority shall collaborate with representatives from local school administrative units, The University of North Carolina, private colleges, the State Board of Education, the State Chief Information Officer, and the Community College System	$100,000	NR		
35 Science Olympiad Funding Provide funds to expand the Science Olympiad program to all LEAs in the State.	$50,000	R	$50,000	R
36 Teach for America Provide funds to non-profit organization that recruits recent college graduates in non-education majors to teach in hard-to-staff schools.	$200,000	R	$200,000	R
37 Durham Nativity School Provide funds for after school programs, basic office and school supplies, and equipment.	$25,000	NR		
38 Scarborough Nursery School Provide funds for operating expenses.	$25,000	NR		
39 Futures for Kids Provide funds to support non-profit organization that enhances schools' capacities to provide students with opportunities for career exploration.	$500,000	NR		
40 Project Enlightenment Provide funding for Wake County to assist Project Enlightenment in continuing its model Demonstration Preschool program and consultation and education services to children, families, teachers, and other professionals in Wake County.	$100,000	NR		

41 Cumberland County Schools
Provide seed funds for an elementary school cultural arts/dance program that focuses on at-risk children. $5,000 NR

42 Mount Airy High School
Provide funds for a computer lab. $20,000 NR

43 North Surry High School
Provide funds for a computer lab. $20,000 NR

44 Vance County Public School Fund
Provide funds to be used to assist in retention and recruitment of teachers. $5,000 NR

45 AKA Center for Community Services
Provide start-up funds for a tutorial project to reduce suspensions and drop outs in Wilson County. $5,000 NR

46 Wilson Delta Community Revitalization Corporation
Provide funds to support the implementation of a test taking project for high school students. $5,000 NR

47 Judy Memorial Family Center
Provide funds to support educational programs. $10,000 NR

48 Edgecombe County Out-of-School Suspension Intervention Program
Provide funds to Edgecombe County to implement an out of school suspension intervention program for children who are on long-term suspension from school. $100,000 NR

49 WNC Communities
Provide funds for operational and educational program support. $50,000 NR

50 Southside School Alumni Funds
Provide funds to the Southside School Alumni Association for replacement of furnishings, repairs, and upgrades. $5,000 NR

51 The Vital Link
Provide funds for operating support. $10,000 NR

52 God's Vision Ministries
Provide funds to the Bridge Builder's for Change Juvenile Male Intervention program which provides afterschool activities for at-risk African American males between the ages of eight to twelve. $18,000 NR

G. Expansion: Department of Public Instruction

53 Receipt Supported Positions

Create the following permanent receipt supported positions in the Department of Public Instruction:

A. Healthy Schools – Federal HIV and Abstinence Education Funds
3 Education Consultants - $249,056
1 Program Assistant V - $42,648
Consultants will assist schools in providing health education for HIV and other health issues for school-age populations. Program Assistant will provide clerical and program support for the staff.

B. Safe Schools – Federal 21st Century Community Learning Centers and Safe and Drug Free Schools Funds
3 Education Consultants - $249,056
1 Program Assistant IV - $39,558
One Consultant will provide technical assistance to schools and LEAs on middle and high school counseling issues. Two Consultants will provide technical assistance to and monitor the 190 centers providing after school programs to at-risk students. Program Assistant will provide clerical and program support for the staff.

C. Child Nutrition – Federal Child Nutrition Funds
2 School Meals Program Consultants - $133,480
One Consultant will assist local education agencies in ensuring that all compliance requirements for federal child nutrition programs are met. The other Consultant will coordinate the implementation and oversight of US Department of Agriculture's Seamless Summer Food Service program, Summer Milk program, Fruit and Vegetable Program, USDA Best Practice program, and the Healthier US program.

D. LEA Plant Operations – Plant Operation Maintenance Receipts
Facility Electrical Engineer II - $90,755
Engineering Technician II - $49,713
Positions will assist LEA customers with engineering projects which includes designing, installing and assisting with electrical, mechanical, HVAC and plumbing projects.

E. Evaluation and Compliance – Federal Title 1 Funds and Indirect Cost Receipts
Program Assistant V - $42,648
Personnel Analyst II - $66,740
Program Assistant V will provide clerical and program support to the Senior Research Director and the Education Program Administrator for evaluation, research and federal programs. Personnel Analyst II will train agency management and employees with respect to employee relations, the performance management system, and equal employment opportunity policies.

	FY 05-06		FY 06-07	
Total Legislative Changes	**($80,645,484)**	R	**($121,286,555)**	R
	$103,320,500	NR		
Total Position Changes	3.00		3.00	
Revised Budget	**$6,607,998,945**		**$6,579,807,097**	

UNC System

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$2,024,322,442**		**$2,052,608,147**	
Legislative Changes				
A. Reductions				
54 Management Flexibility Reduction for UNC Campuses and Programs Reduces the UNC budget for campuses and other programs by 1.72% in FY 05-06 and FY 06-07 and allows management flexibility in handling the cut. This reduction excludes AHEC; Center for Public Television, NC School for the Arts, NC School of Science and Math, State Contractual Scholarship Program and other Related Educational Programs (except Legislative Tuition Grants), and the following K-12 programs: Model Teacher Education Consortium; NC Teach, NC Teacher Academy, Principals Executive Program; Principal Fellows Program; Math and Science Education Network, and the NC Center for the Advancement of Teaching.	($31,047,708)	R	($31,047,708)	R
55 Summer School Eliminates General Fund subsidy of Summer School.	($3,658,515)	R	($3,658,515)	R
56 Building Reserves - Minimum Hiring Rate Reduces the starting salary from the midpoint to the minimum of the pay range for positions related to the operation of new buildings opening during the fiscal year.	($1,428,329)	R	($3,005,385)	R
57 Building Reserves - Completion Dates Adjusts the estimated completion dates for construction projects for information made available in March 2005. A delay in project completion results in a reduction in the number of months needed to staff and operate the new or renovated buildings.	($2,189,924)	NR		
58 SREB Contractual Spaces Eliminates funding for 16 vacant contracted spaces in optometry, dentistry and medical schools negotiated through the Southern Regional Educational Board. (7 dental, 7 medicine, and 68 optometry slots are currently filled with NC residents.)	($169,600)	R	($169,600)	R
59 Need-Based Financial Aid Continues funding the Need Based Financial Aid program from the Escheats Fund.	($23,975,714)	R	($23,975,714)	R

	FY 05-06		FY 06-07	
60 Private Medical School Aid Eliminates $305,788 from the base budget and a $330,212 projected increase for 05-06 based on data from the State Education Assistance Authority. The $1.7 million remaining in the base budget will handle the growth in the number of NC residents attending Wake Forest University and Duke University medical schools.	($636,000)	R	($636,000)	R
61 Medical Scholarships Reduces the base budget by $154,664 and eliminates a $613,635 projected increase because recent data from the State Education Assistance Authority shows that $1.56 million is sufficient to handle growth in the number of NC residents attending medical schools at ECU, UNC, WFU and Duke.	($768,299)	R	($768,299)	R
62 State Contractual Scholarship Program Adjusts the program budget to actual needs. Allows for 2.43% growth in enrollment of NC residents in the state's private colleges and universities and funds the enrollment of 575 NC residents at Johnson and Wales University. Continues the $1,100 per student grant to the colleges.	($545,800)	R	($545,800)	R
63 Juvenile Justice Institute Reduces the appropriation to this institute at NCCU from $500,000 to $250,000.	($250,000)	R	($250,000)	R
64 Non-credit and Receipt Supported Instruction Eliminates General Fund subsidy of non-credit and receipt supported instruction on all campuses.	($684,532)	R	($684,532)	R
65 North Carolina Education Research Council Eliminates the state funding for the North Carolina Education Research Council. This Council was first funded in the 2000 Session to provide research for the Education Cabinet.	($240,020) -2.00	R	($240,020) -2.00	R
66 Strategic Initiatives Reserve Reduces this reserve fund from $4 million to $3.3 million.	($700,000)	R	($700,000)	R
B. Expansion				
67 Enrollment Growth for UNC Campuses Funds enrollment growth for undergraduate and graduate students in regular term and distance education programs. Regular term enrollment is projected to increase by 3,703 undergraduates and 283 graduate students. Distance education enrollment is projected to increase by 1,518 undergraduates and 1,417 graduate students. The UNC Board of Governors will report back to the Education Oversight Committee on the actual enrollment.	$72,753,678 534.70	R	$72,753,678 534.70	R
68 Enrollment Growth for NC School of Science and Math Increases the enrollment at the NC School of Science and Math by 10 students.	$200,000 3.00	R	$200,000 3.00	R

	FY 05-06		FY 06-07	
69 Enrollment Growth for Private College Legislative Tuition Grants Funds a 2.43% increase in enrollment growth in NC residents attending private colleges and universities in the state (to 32,570). Accommodates the enrollment at Johnson & Wales University and students no longer funded by Fort Bragg. Continues the LTG rate at $1,800 per student.	$1,395,488	R	$1,395,488	R
70 UNCW / ASU Equity Funding Increases appropriations to UNCW and ASU so that the appropriation per FTE (full time equivalent) student is 1 standard deviation from the mean for all UNC System campuses. The current appropriation per FTE student is $8,545 for the UNC System, while the approp. / FTE for UNCW is $6,339 (-1.46 STD) and for ASU is $6,933 (-1.07 STD).	$8,398,101	R	$8,398,101	R
71 UNCC Transition to Doctoral / Research Intensive Status Provides funding for additional faculty, library resources, and technology infrastructure needed to implement approved doctoral programs. UNCC achieved Doctoral / Research Intensive status in 2000, but has not received the operating funds commensurate with this elevated academic status.	$5,000,000	R	$10,000,000	R
72 State Contractual Scholarship Fund Increase Increases the State Contractual Scholarship Fund from $1,100 per student in private college to $1,150 per student.	$1,596,000	R	$1,596,000	R
73 Need-Based Financial Aid Funds the expansion in the Need-based scholarship program from the Escheats Fund. $8,674,000 is needed due to enrollment growth and $3,200,000 is needed due to the student loss of Pell Grant funds from a formula change. The Escheats Fund will also continue to pay $1.1 million for the Health Science and Math Loan Program				
74 Millennium Teacher Scholarship Loan Program Funds $390,000 for the second class of 60 teaching scholars at ECSU, FSU, and WSSU in FY 2005-06 and another $390,000 for the third class in FY 2006-07. This was inadvertently left out of the base budget. This program is funded from the Escheats Fund.				
75 UNC-NCCCS 2+2 E-Learning Initiative Provides funding for developing 2+2 distance education programs, for professional development for 2+2 faculty, for technology development and purchases, and for tracking students' progress between NCCCS and UNC. The Community College budget includes an additional $1 million to support the community college side of this initiative.	$1,000,000	NR		

	FY 05-06		FY 06-07	
76 UNC-NCCCS Joint Initiative for Teacher Education and Recruitment	$480,000	R	$640,000	R
Creates 8 UNC positions to be based in the Regional Alternative Licensure Centers to support the expansion of the 2+2 Partnership Programs between UNC and NCCCS constituent institutions, to offer admissions advice to community college students seeking to transfer to a four year teacher education program, to work with prospective teachers to resolve curriculum issues between UNC and community colleges, and to recruit prospective teachers on community college campuses.	8.00		8.00	
77 Model Teacher Education Consortium	$1,000,000	R	$1,000,000	R
Enables the Consortium to extend its services for lateral entry teachers and paraprofessionals (teacher assistants, substitute teachers, etc.) to additional LEAs. The Consortium now serves 40 LEAs in Eastern NC (Alamance and Richmond are the western most counties served).				
78 CFNC Teacher Recruitment and Marketing Online Module	$25,000	R	$25,000	R
Funds a teacher recruitment module on the College Foundation of North Carolina (CFNC) website. The module would provide future teachers with a single source for information concerning education and licensing requirements; grants, scholarships, and loans; and on-line applications for admissions and financial aid.				
79 Principals Effectiveness Program	$125,000	R	$125,000	R
Provides additional funding to develop programs for new principals that focus on a principal's responsibility for instructional leadership, data-driven decision making, and positive teacher working conditions.				
80 Biotechnology Initiatives	$4,941,079	R	$4,941,079	R
Appropriates $2 million to the Biomanufacturing Research Institute and Technology Enterprise (BRITE) at North Carolina Central University and $2.94 million to the Biomanufacturing Training and Education Center (BTEC) at North Carolina State University. Part of the funds are for scientific equipment and supplies needed for startup that were not funded by the construction grant from the Golden LEAF foundation. Funds will also be used to begin hiring administrative and research personnel.				
81 UNC TV Closed Captioning	$483,978	R	$483,978	R
Enables the UNC Center for Public Television to meet a Federal Communication Commission mandate to provide closed captioning on 100% of its content by January 1, 2006. UNC TV must comply with the FCC requirements in order to retain its broadcast license.				
82 William and Ida Friday Institute for Educational Innovation	$1,900,000	R	$1,900,000	R
Provides a reserve for staff, operations, and maintenance costs of the new facility constructed on North Carolina State's Centennial Campus adjacent to Wake County's Centennial Campus Middle School.				

	FY 05-06		FY 06-07	
83 Teacher Scholarship for Math and Science Creates the Future Teachers of North Carolina Scholarship Fund. This fund will award 100 scholarship loans each year to juniors and seniors in North Carolina public and private colleges that agree to become certified to teach math, science, special education, or English as a Second Language in North Carolina public schools. The loan is $6,500 per year and is not repaid if the recipient teaches for three years in the state.	$650,000	R	$1,300,000	R
84 Scholarship Loan for Prospective Coaches Creates the Physical Education - Coaching Scholarship Loan Fund to provide 25 scholarship loans each year. The loans will be administered by the State Education Assistance Authority. The loans do not have to be repaid if the graduate takes a coaching job in a rural or need-based area. A year of work cancels a year of loan repayment	$100,000	R	$200,000	R
85 NC School of Science and Math University Tuition Funds the continued costs of the UNC tuition grant to graduates of the School of Science and Math that began in FY 2004-05. The base budget inadvertently left out funding for future graduates.	$585,565	R	$1,523,183	R
86 North Carolina in the World Project Makes a grant to the Center for International Understanding for the project "North Carolina in the World: A Plan to Increase Student Knowledge and Skills about the World".	$200,000	NR		
87 Manufacturing Extension Partnership Increases state funding to this program within the Industrial Extension Service that assists small manufacturers to become more globally competitive.	$150,000	NR		
88 NC A & T State University Matching Funds Increases the campus match of federal funds from 80% to 90% for agricultural research and extension programs as mandated by the Agricultural Research, Extension, and Education Reform Act of 1998. The funds are appropriated to the School of Agriculture and Environmental Science.	$1,089,000	R	$1,089,000	R
89 North Carolina Space Grant Consortium Provides funds to expand the program beyond the current participating universities. The program attempts to attract students to science and engineering degrees by providing undergraduate scholarships, graduate fellowships, research seed grants, and community outreach.	$200,000	R	$200,000	R
90 Focused Growth Campus Funds Provides additional funds to be evenly divided among the seven focused growth institutions (ECSU, FSU, NCA&T, NCCU, UNC-P, WCU, WSSU).	$2,500,000 $1,250,000	R NR	$2,500,000	R

	FY 05-06		FY 06-07	
91 Special Needs Institutions Provides funds to UNC-Asheville and the NC School of the Arts for nonrecurring needs.	$1,000,000	NR		
92 Initiatives to Close the Achievement Gap Appropriates funds to the Board of Governors to continue to support the operations and work of the North Carolina Historically Minority Colleges and Universities Consortium. The Consortium will determine the best practices and methodologies for closing the achievement gap among children of various demographic groups who are performing below grade level.	$300,000	R	$300,000	R
93 Center for Craft, Creativity and Design Provides a reserve for operating this center located on UNC-A's Kellogg Center property in Henderson County. Expenditure of the reserve is contingent on receiving a permanent endowment from a private foundation to fund graduate scholarships.	$200,000 2.50	R	$200,000 2.50	R
94 North Carolina Center on the Advancement of Teaching Provides operating funds for NCCAT's new Ocracoke campus to make its professional development services more accessible to Eastern North Carolina.	$2,300,000	R	$2,300,000	R
95 ECU Brody School of Medicine - Medicare Receipts Repeals $1 million Medicare reimbursement to General Fund for cost of training physicians (faculty salaries and benefits). Deletion of the receipt in code 16066-0697 results in an increase in the ECU Health Affairs budget. Repeals the reimbursement of operating costs for outpatient facilities ($700,000) and appropriates funds to hold harmless the ECU Health Affairs budget	$1,700,000	R	$1,700,000	R
96 Judicial College Establishes a Judicial College within the UNC-Chapel Hill School of Government to provide training and continuing education for the state's 400 judges.	$250,000	R	$250,000	R
97 Renaissance Computing Institute Provides funds for the expansion of the Renaissance Computing Institute at UNC-Chapel Hill and other regional campuses.	$5,900,000	R	$11,800,000	R
98 Hunt Institute Funds operating expenses for the James B. Hunt, Jr Institute for Educational Leadership and Policy in Chapel Hill. The Institute's mission is to "engage governors and other leaders in strategic efforts to advance and sustain state-level education reform".	$500,000	R	$500,000	R
99 Program on Southern Politics, Media and Public Life Provides operating support to this policy research program at UNC-Chapel Hill. This research group will provide the General Assembly with reports on demographic, social, economic, and environmental trends.	$150,000	R	$150,000	R

100 NCSU Center for Universal Design

Provides grant to this Center that designs products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. $300,000 NR

101 UNC-CH Cochlear Implant Program

Appropriates funds to the UNC Board of Governors to fund CASTLE (Center for the Acquisition of Spoken Language Through Listening Enrichment) which is operated by the Carolina Children's Communicative Disorders Program of the UNC Health Care System. CASTLE shall use these funds to 1) train teachers and therapists across the state to work with deaf preschool-age children with cochlear implants and 2) provide oral preschool classes to these children. $327,000 NR

102 NCSU Green Industry Study

Appropriates funds to the UNC Board of Governors to be allocated to NC State University to evaluate the economic impact of the green industry in the State of North Carolina. The Green Industry is defined as well over 5,000 firms statewide involved in the production, design, installation, maintenance and sale of plants (trees, shrubs, flowers), sod and related goods and services to enhance, beautify, and protect human environments, provide jobs and economic growth. The Board of Governors shall report to the Chairs of the Appropriation Committees of the Senate and House of Representatives regarding the findings of the study. $150,000 NR

103 Western Carolina University Fire Protection

Provides funds to UNC Board of Governors for a grant-in-aid to the Cullowhee Volunteer Fire Department to purchase a 95 foot platform truck and equipment needed to provide fire protection services to high-rise facilities on the Western Carolina University campus. $715,000 NR

104 NC Central University

Funds equipment and operational support for the NCCU Department of Athletics and early high school educational programs. $100,000 NR

105 NC A & T State University Arts Center Planning Funds

Provides funds to NC A & T State University for planning activities related to the construction of a cultural and performing arts center on campus. $25,000 NR

106 North Carolina Japan Center

Provides funding to operate the NC Japan Center at NCSU. $20,000 NR

107 Bowles Center for Alcohol Studies

Appropriates funds to the Bowles Center for Alcohol Studies at the UNC-Chapel Hill School of Medicine. $450,000 NR

	FY 05-06		FY 06-07	
108 ECU Auditory Learning Center Provides funds to the East Carolina University Health Sciences Division and the Auditory Learning Center to 1) train teachers and therapists across the state to work with deaf preschool-age children with cochlear implants, 2) provide oral preschool classes to these children, and 3) coordinate educational planning between the clinical team and the school system	$100,000	NR		
109 UNC-CH DESTINY Traveling Science Lab Appropriates funds to the UNC-Chapel Hill DESTINY Traveling Science Laboratory program	$500,000	NR		
110 Land Loss Prevention Project Appropriates funds to North Carolina Central University to be used to support the Land Loss Prevention Project.	$225,000	NR		
111 UNC Hospitals - Translational Science Program Establishes a program at UNC Hospitals to identify and train junior faculty members in translational research to speed the development of new drugs, therapeutic strategies, devices and/or diagnostics, and to train physicians to collaborate with research faculty to apply medical discoveries to patient care and patient observations in research programs to improve health care.	$1,000,000	NR		
112 UNC Hospitals Indigent Care Provides funds for indigent care services at UNC Hospitals.	$5,000,000	R	$5,000,000	R
113 NCSU Agricultural Curriculum Development Coordinator Funds an Agricultural Curriculum Development Coordinator at NC State University to develop agricultural education programs in the public schools in North Carolina	$150,000	NR		
114 NC Cooperative Extension Service Clinton Facility Funds the construction of a new office facility to house the North Carolina Cooperative Extension Service in Clinton.	$140,000	NR		
115 Tyrrell County 4-H Environmental Education Center Provides funds to NC Cooperative Extension Service for capital expansion and program activities at the Tyrrell County 4-H Environmental Education Center.	$500,000	NR		
116 Salary Reserves Funds salary increases for NCSU and NC A&T Agricultural Employees ($4 million) and UNC Chancellors ($334,147). These salary reserves are found in the Salaries and Employee Benefits section of the budget bill and in the Reserves/Debt Service/Adjustments section of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets.				

C. Transfers

117 WCU & Child Developmental Services Agency - Receipt Supported Positions

Transfers twenty receipt-supported positions from Western Carolina University to the Division of Public Health, Women's and Children's Health Section, for the purpose of operating the Children's Developmental Services Agency of the Smokies. The CDSA currently operated by Western Carolina University through contract is transferred to the Division of Public Health.

Habilitation Specialist III - $32,289
Habilitation Specialist III - $35,311
Habilitation Specialist III - $36,286
Habilitation Specialist III - $35,772
Habilitation Specialist III - $36,373
Habilitation Specialist III - $34,008
Habilitation Specialist III - $33,930
Habilitation Specialist III - $31,200
Habilitation Specialist III - $30,354
.50 Staff Psychologist II- $25,336
Two Staff Psychologist II's @$44,161
Two Educational Diagnostician II's @$32,940
Educational Diagnostician II - $37,886
Educational Diagnostician II - $42,066
Spanish Translator - $28,038
Physical Therapist II - $56,346
Occupational Therapist I - $51,260
Speech and Language Pathologist - $40,310

These positions will be funded through the Individuals with Developmental Disabilities Education Act and Medicaid receipts.

118 WCU & Child Developmental Services Agency - State Supported Positions

Transfers twenty-two state supported positions from Western Carolina University to the Division of Public Health, for the purpose of operating the children's Developmental Services Agency of the Smokies. The CDSA currently operated by Western Carolina University through contract is transferred to the Division of Public Health.

.5 FTE Computing Support Technician I - $11,626
Two Program Assistant IV's @$21,576
Program Assistant IV - $29,326
Program Assistant IV - $29,627
Development Evaluation Center Assistant Director - $52,783
Staff Psychologist II - $42,292
Staff Psychologist II - $42,131
Staff Psychologist II - $46,334
Administrative Officer III - $44,923
.625 FTE Administrative Assistant I - $22,091
Processing Assistant IV - $25,047
Processing Assistant IV - $22,800
.75 Physical Therapist II - $46,800
Occupational Therapist I - $38,773
Occupational Therapist I - $42,424
Speech and Language Pathologist I - $56,466
Nutritionist III - $42,126
Habilitation Program Supervisor I - $40,125
Habilitation Program Coordinator - $33,363
Physician Extender II - $58,210
DEC Director - $60,916

These positions will be funded 100% with state funds. The transfer will not have any fiscal impact on the DPH CDSA Program budget because all funds supporting the transfer are currently located within the DPH budget code.

Total Legislative Changes	**$55,618,372**	R	**$66,788,934**	R
	$6,112,076	NR		
Total Position Changes	546.20		546.20	
Revised Budget	**$2,086,052,890**		**$2,119,397,081**	

Community Colleges

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$756,320,880**		**$756,330,823**	
Legislative Changes				
A. Categorical and Miscellaneous Programs				
119 Community Service Block Grant Reduces the Community Service Block Grant by 10% (from $1,185,114) to $1,066,603).	($118,511)	R	($118,511)	R
120 Compensatory Education Reduces the appropriation for Compensatory Education by 10% (from $1,097,364 to $987,628). Colleges earn FTE for students enrolled in the Compensatory Education program	($109,736)	R	($109,736)	R
121 Off-Campus Center Funding Reduces the appropriation for off-campus centers.	($400,000)	R	($400,000)	R
122 Multi-Campus College Funds Provides additional funding for four colleges that have new multi-campus sites.	$1,376,832	R	$1,376,832	R
123 NC Center for Applied Textile Technology Reduces the appropriation for the NC Center for Applied Textile Technology based on administrative savings from the merger with Gaston College.	($475,000)	R	($475,000)	R
124 Hosiery Technology Center Increases the Hosiery Technology Center's budget to $600,000, replacing funds lost from the Worker Training Trust Fund. These funds are being transferred from the NC Center for Applied Textile Technology (see item above).	$475,000	R	$475,000	R
125 Customized Industry Training Provides funding for a new workforce development program in the community college system that will allow colleges to serve companies that need training in order to stay competitive. The new program will complement training available to industry through Focused Industrial Training and New and Expanding Industry Training.	$2,625,000	R	$2,750,000	R
126 Small Business Centers Provides additional funding for the small business centers located at each community college.	$1,000,000	R	$1,000,000	R

	FY 05-06		FY 06-07	
127 UNC-NCCCS 2+2 E-Learning Initiative Provides funding to support the development of 2+2 distance education programs, professional development for 2+2 faculty, technology development and purchases, and to track students' progress between NCCCS and UNC. The university budget includes an additional $1 million to support the university side of this initiative.	$1,000,000	R	$1,000,000	R
128 Isothermal Lifelong Learning Center Provides matching funds to Isothermal Community College for the Lifelong Learning Center. Funds may be used for construction of the facility or to equip the facility.	$1,500,000	NR		
129 Equipment Provides additional funding for community college equipment. Of these funds, up to $500,000 may be used for the design of a replacement boat for the Marine Technology Program at Cape Fear Community College.	$10,000,000	R	$10,000,000	R
130 NCCCS BioNetwork Provides funding for the NCCCS BioNetwork.	$7,101,864	R	$7,101,864	R
131 Advanced Manufacturing Center Provides funding for the construction of the Bosch & Siemens Advanced Manufacturing Center at Craven Community College.	$3,700,000	NR	$3,700,000	NR
132 Forsyth Tech Center for Emerging Technologies Provides funds for the construction of the Center for Emerging Technologies at Forsyth Technical Community College. The Center will house the biotechnology, nanotechnology, design, and advance information technology programs, the Small Business Center, and Corporate Training Services.	$3,000,000	NR		
133 Southeastern Community College Facility Funds Provides funds to establish, acquire, and/or renovate facilities for biotechnology and other programs at Southeastern Community College.	$3,000,000	NR		
134 Defense Technology Innovation Center Provides funds to the NC Electronics and Information Technologies Association (NCEITA) for the development of the Defense Technology Innovation Center, a business incubator focusing on economic development opportunities in the industries relating to homeland security and national defense.	$2,000,000	NR		
135 Robeson Community College Workforce Development Center Provides funds to Robeson Community College for construction of the Workforce Development Center. Funds may also be used for the establishment of a training facility to provide training on the construction and use of structural insulated panels (SIPs).	$500,000	NR		

136 Lenoir Community College Simulated Cell Area
Provides funds to Lenoir Community College for the fabrication of a simulated cell for use in training prison personnel in Greene County and the surrounding areas. $200,000 NR

137 Bladen Community College Funds
Provides funding for the renovation of the physical plant at Bladen Community College. $500,000 NR

138 Cleveland Community College Allied Health & Science Building
Provides funds for equipment and supplies for the Allied Health and Science Building at Cleveland Community College. $1,000,000 NR

139 Gaston College Equipment and Capital Improvements
Provides funds to Gaston College for capital improvements, renovation, and equipment. Funds may be used at any of the college's campuses. $500,000 NR

140 COA Chowan Campus Funds
Provides funds to continue construction of Phase I of the Chowan campus expansion. These funds may be used for construction or equipment on the Chowan campus. $1,000,000 NR

141 Textile Center Building Renovation
Provides funds to Gaston College for renovation of the Textile Center buildings located in Belmont. $1,200,000 NR

142 Wilson Community College Green Buildings
Provides funding for environmentally friendly equipment for new "green" buildings at Wilson Community College. $300,000 NR

143 Surry CC Viticulture Center
Provides funding for the expansion of the Viticulture Center at Surry Community College. These funds may be used for construction or equipment. $325,000 NR

144 Nash Community College Science Building
Provides funds to equip the new Science Building at Nash Community College. $300,000 NR

145 Edgecombe Community College Allied Health & Science
Provides funds for planning and development of an Allied Health and Science Center building at Edgecombe Community College. $300,000 NR

146 College of the Albemarle Allied Health Programs
Provides funds for equipment for expansion of the science labs used for COA's allied health programs. $250,000 NR

147 Central Piedmont Community College Automotive Technology Center
Provides matching funds for construction of the Hendrickson Automotive Technology Center. $1,000,000 NR

	FY 05-06		FY 06-07	
148 Central Carolina Community College				
Provides funds for Central Carolina to be distributed among the campuses as follows: $100,000 for the Lee County campus for planning, capital improvements, or equipment for expansion of the campus; $25,000 for equipment for the Bioprocessing program at the Lee County Campus; $25,000 for equipment and capital improvements for the library at the Harnett County campus; $50,000 for the Biofuels Program at the Chatham County campus; and $450,000 for the development of a new campus in Siler City.	$650,000	NR		
149 Hickory Metropolitan Higher Education Center				
Provides funds for nursing equipment for use in nursing programs operated at the Hickory Metropolitan Higher Education Center.	$150,000	NR		
150 Richmond Community College				
Provides funds to Richmond Community College for development of a satellite campus on the site of Scotland Memorial Hospital in Laurinburg.	$100,000	NR		
151 Sandhills Community College Renovation Funds				
Provides funds to repair, renovate, and expand Owens Auditorium at Sandhills Community College.	$300,000	NR		
152 Fayetteville Technical Community College				
Provides funds for the continued operation of the Military Business Center at Fayetteville Technical Community College.	$200,000	NR		
153 NC REAL				
Provides funding for NC REAL to replace funds formerly appropriated from the Worker Training Trust Fund.	$250,000	NR		
B. Administrative and Instructional Formulae				
154 Curriculum Instructional Formula	($7,608,407)	R	($7,608,407)	R
Authorizes the State Board of Community Colleges to modify the curriculum instructional formula by adjusting the unit value.				
C. System Office				
155 System Office Personnel	$225,000	R	$225,000	R
Provides additional funding for two accounting specialists in the Division of Business and Finance, an administrative assistant in the Executive Division, and a Fire and Law Training Coordinator in the Workforce Development Division.	4.00		4.00	
156 Director of College Development	$86,000	R	$86,000	R
Provides funding for a new position in the Executive Division to assist colleges with fund raising, grant development, and the federal grant process.	1.00		1.00	

157 Receipt Supported Positions

Allows for the creation of the following receipt supported positions in the Community College System Office:

A. Career Readiness Certification - Workforce Investment Act Funds through the Division of Employment & Training in the Department of Commerce
1 Education Consultant II - $80,155.40
This position will provide leadership and policy direction to the new Career Readiness Certification System that will be implemented by NCCCS, the local colleges, and the JobLink Career Centers across the State.

D. Enrollment, Tuition, and Financial Aid

	FY 05-06		FY 06-07	
158 Enrollment Fully funds the community college enrollment increase. Enrollment increased by 2,449 FTE in FY 04-05, from 188,610 FTE to 191,059, a 1.30% increase.	$7,802,343	R	$7,802,343	R
159 Need Based Financial Aid Funds the Need Based Financial Aid program from the Escheats Fund. An additional $3,000,000 will be appropriated from the Escheats fund - $2 million to offset the change in Pell Grant eligibility, and $1 million to offset an increase in tuition. The total amount available for Need Based Financial Aid will be $13,981,202.	($10,262,806)	R	($10,262,806)	R
160 Tuition Increases community college tuition by 4%, from $38 per credit hour to $39.50. Full-time students will pay $632 per semester or $1,264 per year.	($5,577,516)	R	($5,577,516)	R
161 Enrollment Reserve Fund Creates an enrollment reserve fund to assist colleges that experience high growth in the Fall Semester. Funds shall be distributed to colleges in which the enrollment growth in the Fall semester exceeds 5% over the previous year.	$2,000,000	NR		

E. Salary Information Items

162 Increase Faculty and Professional Staff Salaries

Funds are included in the Salary Reserve Section of this budget to provide an additional 2% increase to faculty and professional staff in the community colleges. These funds are in addition to funds provided for State Employee increases.

163 President's Salary Schedule

Funds are appropriated in the Salary Reserve Section of this Budget to provide additional increases to the Community College Presidents. Funds will be allocated in accordance with the Salary Schedule revised by the System Office dated July 27, 2005.

	FY 05-06		FY 06-07	
Total Legislative Changes	**$7,140,063**	R	**$7,265,063**	R
	$24,225,000	NR	**$3,700,000**	NR
Total Position Changes	5.00		5.00	
Revised Budget	**$787,685,943**		**$767,295,886**	

HEALTH
&
HUMAN SERVICES
Section G

2060

Health and Human Services

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$4,157,710,279**		**$4,478,316,506**	
Legislative Changes				
(1.0) Division of Medical Assistance				
1 Freeze Medicaid Rates Freezes rates for SFY 2005-06 for most Medicaid providers at the level authorized in SFY 2004-05. The rate freeze applies to all Medicaid private and public providers with the following exceptions: federally qualified health clinics, rural health centers, state institutions, outpatient hospital, pharmacy and the noninflationary components of the case-mix reimbursement system for nursing facilities. Inflationary increases for Medicaid providers paying provider fees (private ICF-MRCs and nursing facilities can occur if the state and county share of the increases can be funded with provider fees.	($62,491,547)	R	($137,055,611)	R
2 Personal Care Services Utilization Management Reduces funding for Personal Care Services by directing the Division of Medical Assistance to develop a utilization management system for personal care services and PCS-Plus.	($13,711,542)	R	($16,115,389)	R
3 Co-Payments Increases the co-payments for the following services: chiropractic, optometry, podiatry, non-emergency ER visits, inpatient hospital stays, and generic prescription drugs. The new co-payments will be as follows: Chiropractic $ 3.00 Optical $ 3.00 Podiatry $ 3.00 Hospital Outpatient $ 3.00 Non-emergency ER Visit $ 3.00 Generic Prescription Drug $ 3.00 Effective October 1, 2005.	($5,400,000)	R	($5,400,000)	R
4 Drug Utilization Management Plan Expands drug utilization management measures intended to contain the cost of Medicaid prescription drug expenditures.	($2,749,963)	R	($6,788,009)	R
5 Medicare Part D Claw Back Reduces funding to reflect the savings realized by the State when the Medicare Part D program begins paying for prescription drugs for dual eligibles January 1, 2006.	($11,000,000)	R	($22,000,000)	R

	FY 05-06		FY 06-07	
6 Medicaid Reserve Fund Transfers funding from the G.S. 143-23.2 reserve to support current services and reduces state appropriations.	($50,000,000)	NR	($50,000,000)	NR
7 Revised Medicaid Forecast Reduces State appropriations for the Medicaid Program based on the revised forecast for SFY 2005-06.	($20,000,000)	NR		
8 Community Care of NC Management Savings Reduces funding for the Medicaid program due to increased savings resulting from the expansion of scope of the Community Care of NC Program to Aged, Blind, and Disabled Medicaid recipients that are dually eligible for Medicaid and Medicare.	($22,225,000)	R	($32,225,000)	R
9 Community Care of NC Enhancement Expands the scope of the Community Care of NC program to Medicaid recipients who are Aged, Blind, and Disabled and dually eligible for Medicaid and Medicare. The Community Care of NC program will focus on improving the management and coordination of services for the dually eligible targeting Personal Care Services, Private Duty Nursing, Home Health, Durable Medical Equipment, Ancillary Professional Services, Specialty Care, Home Infusion Therapy, Pharmacy, and Residential Long-Term Care Services. Enhancing the financing of the Community Care of North Carolina program will insure that the Community Care Management Savings reductions will occur.	$3,000,000	R	$6,000,000	R
10 Ticket-to-Work Medicaid Expansion Provides funding to implement a Medicaid buy-in program for workers with disabilities. Effective July 1, 2006.			$150,000	R
11 ACH Personal Care Services for Residents of Special Care Units Provides funding to increase the number of hours of Adult Care Home Personal Care Services for residents of Special Care Units from 1.1 hours per day to 4.07 hours per day beginning October 1, 2006.			$1,744,186	R
12 Policy Research and Planning Provides funding to increase staff for the Division of Medical Assistance to expand policy research and planning activities. Activities include the following: (1) Review of the Medicaid State Plan to ensure the program is in compliance with all applicable federal laws and regulations; (2) Researching emerging state, regional, and national health care issues; and (3) Advising on state and national Health care policies, laws and regulations.	$175,000 3.00	R	$175,000 3.00	R
13 Increase Rates for Dental Services Provides funding to increase Medicaid rates for dental services.	$2,000,000	R	$2,000,000	R

	FY 05-06		FY 06-07	
14 Coverage for Children 0 to 5 to 200% FPL Provides funding to transfer children age birth to five in families with incomes up to 200% of the federal poverty level from the NC Health Choice Program to the Medicaid Program Effective January 1, 2006.	$7,098,392	R	$16,466,805	R
(2.0) NC Health Choice				
15 NC Health Choice Provides funding for the NC Health Choice program to support increased enrollment of children age 6 to 18. Authorizes 3% enrollment growth every six months. Authorizes the NC Health Choice program to pay 115% of Medicaid rates effective no later than January 1, 2006 and authorizes 100% of Medicaid rates effective July 1, 2006.	$6,133,784	R	($10,153,079)	R
(3.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services				
16 Institutional Receipts Reduces funding for the State institutions by budgeting over-realized receipts.	($2,550,000)	R	($2,550,000)	R
17 Central Office Continues reduction in funding for the Central Office based on historical reversions.	($500,000)	R	($500,000)	R
18 Crisis Intervention Services Provides funding for the start-up and ongoing costs of providing community based crisis services for children and adults in the mental health target population.	$2,000,000	R	$2,000,000	R
19 Long-Term Vocational Support Services Provides funding to expand long-term vocational support services to additional clients in supported employment.	$1,500,000	R	$1,500,000	R
20 System of Care for Child Mental Health Provides transition funding for area and county programs for the implementation and on-going support of community-based system of care child and family teams.	$2,000,000	R	$2,000,000	R
21 Mental Health Treatment Court Provides continuation funding for the mental health treatment courts in the 15B (Orange/Chatham) and 26 (Mecklenburg) judicial districts.	$258,000	R	$258,000	R
22 Intensive Substance Abuse Services for Children Provides funding for the delivery of substance abuse services for children through multisystemic therapy and intensive in-home services.	$1,250,000	R	$1,250,000	R

	FY 05-06		FY 06-07	
23 Division TEACCH Program Provides funding for the Division TEACCH Program at the University of NC at Chapel Hill: $153,000 to support a staff person responsible for researching and developing new public funding opportunities to support research and program development; $132,847 for the Raleigh TEACCH Center; $149,375 TEACCH mandated faculty salary increases; $17,525 for administrative staff at the Greensboro TEACCH Center; and $20,000 for rent increases in diagnostic clinics.	$472,747	R	$472,747	R
24 Adult Substance Abuse Services Provides funding for adult substance abuse services.	$750,000	R	$750,000	R
25 El Futuro, Inc. Provides a grant-in-aid to El Futuro, Inc. to develop a pilot project to improve access to and quality of mental health, developmental disabilities, and substance abuse services currently available to the Latino population in Orange and Chatham counties.	$75,000	NR		
26 Autism Society Provides funding for a grant-in-aid to the Autism Society.	$300,000	NR		
27 Hope Haven, Inc. Provides a grant-in-aid to Hope Haven, Inc. for operation and support for a rehabilitation home for mothers and their children and other individuals with addiction problems.	$100,000	NR		
28 Orange-Person-Chatham Mental Health Authority Provides a grant-in-aid for the Orange-Person-Chatham Mental Health Authority for program services.	$100,000	NR		
29 Mission House for Women Provides a grant-in-aid to the Mission House for Women for its operations.	$10,000	NR		
30 Derek's Renaissance House, Inc. Provides a grant-in-aid to Derek's Renaissance House, Inc. to assist with rehabilitation of persons with severe and persistent mental illness living in Wake County and surrounding areas.	$50,000	NR		
31 Myrover-Reese Fellowship Home, Inc. Provides a grant-in-aid to the Myrover-Reese Fellowship Home, Inc. for substance and alcohol abuse services and rehabilitation efforts.	$3,500	NR		

	FY 05-06		FY 06-07	
32 Community Alternatives for Supportive Abodes				
Provides a grant-in-aid to Community Alternatives for Supportive Abodes in Wake County.	$20,000	NR		
33 LME Administration				
Provides funding to address unmet needs for local management entity administration.	$1,950,000	NR		
34 Orange-Person-Chatham Mental Health Authority				
Provides a grant-in-aid to the Orange-Person-Chatham Mental Health Authority to fund Club Nova Mental Health Agency to promote opportunities for adults with mental illness.	$75,000	NR		
35 Orange-Person-Chatham Mental Health Authority				
Provides a grant-in-aid to the Orange-Person-Chatham Mental Health Authority to fund KidsCope Mental Health Agency to provide services to families with youth with mentall illness.	$75,000	NR		
(4.0) Division of Facility Services				
36 Overrealized, Unbudgeted, Indirect Receipts				
Requires the Department of Health and Human Services to budget overrealized, unbudgeted, indirect receipts within the Division of Facility Services and to reduce state appropriations in the programs and activities that received the overrealized, unbudgeted, indirect receipts.	($600,000)	NR		
37 Licensure and Inspection Fees	($1,800,000)	R	($1,800,000)	R
Doubles all existing licensure and inspection fees for health care facilities (excluding Hospice and Emergency Medical Services).				
38 Mental Health Licensure and Inspections	$936,029	R	$1,560,724	R
Expands the Division of Facility Services' Mental Health Licensure and Certification Section by 13 positions in the first year and an additional 10 positions in the second year. Additional staff will allow annual inspections of 24-hour residential facilities for the mentally ill, developmentally disabled, and substance abuse populations. Two additional regional offices will be created.	$45,500 13.00	NR	$12,000 23.00	NR
39 Adult Care Licensure and Inspections	$1,006,927	R	$2,080,955	R
Expands the Division of Facility Services' Adult Care Licensure Section by 14 positions in the first year and an additional 17 positions in the second year. Additional staff will allow annual inspections of adult care homes. Two additional regional offices will be created.	$48,300 14.00	NR	$25,000 31.00	NR

	FY 05-06		FY 06-07	
40 Construction Inspections	$656,413	R	$1,166,709	R
Expands the Division of Facility Services' Construction Section by 9 positions in the first year and an additional 7 positions in the second year. Additional staff will allow physical plant and life-safety inspections of adult care homes and 24-hour residential facilities for the mentally ill, developmentally disabled, and substance abuse populations every two years. Also allows for a faster initial regulatory compliance review time.	$33,600	NR	$10,200	NR
	9.00		16.00	
41 Complaint Intake	$133,487	R	$133,487	R
Expands the Division of Facility Services' Complaint Intake Unit by 3.5 positions. This expansion will provide the staff necessary to respond to the anticipated increase in complaint call volume as the DFS toll-free complaint number will now be posted in all residential facilities monitored by DFS. This expansion will also support a new automated call directory system	$372,722	NR		
	3.50		3.50	
42 Home Care Agency Licensure and Inspections	$218,495	R	$218,495	R
Expands the Division of Facility Services' Licensure and Certification Section by 5 positions. Additional staff will allow for inspection and monitoring of non-Medicare licensed home care agencies on the same inspection schedule as Medicare certified agencies (every 36 months).	$5,469	NR		
	5.00		5.00	

43 Receipt Supported Positions - HSRA Bioterrorism

Creates two positions for the Division of Facility Services to develop disaster management initiatives in the Office of Emergency Medical Services:

Social Services Program Coordinator - $44,923
Social Services Program Administrator I - $49,076

These positions will be 100% receipt-supported through the federal Bioterrorism Hospital Preparedness Grant and the federal EMS for Children Grant.

(5.0) Division of Vocational Rehabilitation

44 Receipt Supported Positions - Watauga, Ashe, and Alleghany County Schools

Creates 1 position within the Division of Vocational Rehabilitation that will be shared equally between Watauga County Schools, Ashe County Schools, and Alleghany County Schools.

Rehabilitation Counselor I - $38,038

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

45 Receipt Supported Position - Buncombe County and Madison County Schools

Creates 1 position within the Division of Vocational Rehabilitation that will be shared equally between Buncombe County Schools and Madison County Schools.

Human Resources Placement Specialist - $28,000

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

46 Receipt Supported Position - Catawba County Schools

Creates 1 position within the Division of Vocational Rehabilitation for the Catawba County Schools.

Rehabilitation Counselor I- $36,750

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

47 Receipt Supported Positions - Charlotte/Mecklenburg Board of Education

Creates 3 positions within the Division of Vocational Rehabilitation for the Charlotte/Mecklenburg School System

2 Rehabilitation Casework Technician I's - $30,900 each
Vocational Evaluator II - $33,561

These position are 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

48 Receipt Supported Positions - Columbus County and Whiteville City Schools

Creates 2 positions within the Division of Vocational Rehabilitation. The Rehabilitation Casework Technician position will be shared equally between Columbus County Schools and Whiteville City Schools. The Rehabilitation Counselor I position is for Columbus County Schools.

Rehabilitation Casework Technician - $30,900
Rehabilitation Counselor I - $36,050

These position are 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

49 Receipt Supported Positions - New Hanover Board of Education

Creates 2 positions within the Division of Vocational Rehabilitation for the New Hanover County School System

Rehabilitation Casework Technician - $30,900
Rehabilitation Counselor I - $36,050

These position are 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

50 Receipt Supported Position - Onslow County Board of Education

Creates 1 position within the Division of Vocational Rehabilitation for the Onslow County Schools.

Rehabilitation Counselor I- $36,050

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

51 Receipt Supported Position - Pitt County Schools

Creates 1 position within the Division of Vocational Rehabilitation for the Pitt County Schools.

Rehabilitation Counselor I- $36,050

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

52 Receipt Supported Position - Stanley County Schools

Creates 1 position within the Division of Vocational Rehabilitation for the Stanley County Schools.

Human Resources Placement Specialist- $33,268

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

53 Receipt Supported Position - Wilkes County Schools

Creates 1 position within the Division of Vocational Rehabilitation for the Wilkes County Schools.

Human Resources Placement Specialist - $32,550

This position is 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

54 Receipt Supported Positions - Winston-Salem/Forsyth County Schools

Creates 2 positions within the Division of Vocational Rehabilitation for the Winston-Salem/Forsyth County School System

Rehabilitation Counselor I - $34,042
Vocational Evaluator II - $34,042

These position are 100% receipt-supported through local funds (21.3%) and US Department of Education-Basic Support funds (78.7%).

(6.0) Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing

	FY 05-06		FY 06-07	
55 Medical Eye Care Program Reduces funding for inflation for the biennium	($81,404)	R	($81,404)	R
56 Receipts from Wireless and Relay Funds Reduces funding by increasing receipts from the Wireless and Relay Funds to support 29% of fourteen existing positions in the Division of Services for the Deaf and Hard of Hearing.	($200,000)	R	($200,000)	R
57 Accessible Electronic Information for Blind and Disabled Persons Provides funding to establish an accessible electronic information service for blind and disabled persons.	$75,000	NR		
58 North Carolina Association of Radio Reading Services Provides a grant-in-aid to the North Carolina Association of Radio Reading Services.	$40,000	NR		

(7.0) Division of Aging and Adult Services

59 N.C. Senior Games Program Provides a grant-in-aid to North Carolina Senior Games, Inc. for the North Carolina Senior Games Program	$100,000	NR		
60 Coordinating Council for Senior Citizens, Durham, N.C. Provides a grant-in-aid to the Coordinating Council for Senior Citizens, Durham, N.C.	$50,000	NR		
61 Camden County Senior Services Provides a grant-in-aid to Camden County for the purchase of a vehicle for the Camden County Senior Services program	$22,000	NR		
62 Jewish Community Center of Charlotte, Inc. Provides a grant-in-aid to the Jewish Community Center of Charlotte, Inc. for the Levine Jewish Community Center Senior Programs.	$200,000	NR		
63 Town of Wendell Provides a grant-in-aid to the Wendell Senior Center to serve senior citizens in Eastern Wake County.	$15,000	NR		

	FY 05-06		FY 06-07	
64 Cumberland County Retired Senior Volunteer Program, Inc.				
Provides a grant-in-aid to the Cumberland County Retired Senior Volunteer Program, Inc.	$3,500	NR		
65 Wilson Community Improvement Association, Incorporated				
Provides a grant-in-aid to the Wilson Community Improvement Association, Incorporated to support the senior citizens program for health and wellness and transportation.	$40,000	NR		
66 Black Creek Family and Enrichment Center				
Provides a grant-in-aid to the Black Creek Family and Enrichment Center.	$15,000	NR		
67 Little River Community Complex, Inc.				
Provides a grant-in-aid to Little River Community Complex, Inc. for maintenance of the facility and continuation of senior programs.	$15,000	NR		
68 Meals on Wheels Council, Inc.				
Provides a grant-in-aid to Meals on Wheels Council, Inc. in New Hanover County.	$20,000	NR		
(8.0) Division of Social Services				
69 State/County Special Assistance	($977,007)	R	($1,332,626)	R
Reduces excess funding in continuation budget.				
70 Increase SA Rate for Residents of Special Care Units	$285,632	R	$380,843	R
Provides funding for an increase in the State/County Special Assistance rate for residents of Special Care Units from $1,084 to $1,515 beginning October 1, 2005.				
71 State/County Special Assistance Rate Adjustment	$2,700,000	R	$3,100,000	R
Provides state funds for an increase in the State/County Special Assistance monthly rate from $1,084 per month to $1,118 per month effective October 1, 2005. The total requirement for the increase is $5,400,000 in SFY 2005-06 and $6,200,000 in SFY 2006-07, with the state funding 50% and counties funding the remaining 50%				
72 Reallocation of Child Caring Institutions Funding	($693,295)	R	($693,295)	R
Reallocates funding for child caring institutions to provide the necessary resources to strengthen regulatory oversight in the Division of Social Services for all foster care facilities.				
73 Strengthen Regulatory Oversight for Licensure	$693,295	R	$693,295	R
Provides funding to strengthen regulatory oversight in the Division of Social Services for all foster care facilities.	8.00		8.00	
74 Food Banks	$1,000,000	R	$1,000,000	R
Provides funding to be equally distributed to the regional network of food banks in North Carolina.				

	FY 05-06		FY 06-07	
75 Multiple Response System Provides funding to hire additional child protective services workers at the local level to reduce the caseload per child protective services worker ratios throughout the State to support the expansion of the multiple response system to all counties in the State. This funding will be used to expand the Multiple Response System to counties which have not implemented the program	$2,000,000	R	$2,000,000	R
76 Child Advocacy Centers Provides equal grants-in-aid to each certified child advocacy center.	$225,000 $150,000	R NR	$225,000	R
77 Women-in-Action, Inc. Provides a grant-in-aid for Women in Action, Inc. for the Prevention of Violence and Its Causes located in Durham	$50,000	NR		
78 Thompson Child & Family Focus. Provides a grant-in-aid to Thompson Child & Family Focus.	$200,000	NR		
79 Florence Crittenton Services, Inc. Provides a grant-in-aid to the Florence Crittenton Services, Inc. for operational and program support services.	$100,000	NR		
80 Allegro Foundation Provides a grant-in-aid to Allegro Foundation for operational and support services.	$25,000	NR		
81 Children's Home Society of North Carolina, Inc. Provides a grant-in-aid to the Children's Home Society of North Carolina, Inc.	$100,000	NR		
82 Strengthening the Black Family, Inc. Provides a grant-in-aid to Strengthening the Black Family, Inc. for educational enrichment.	$10,000	NR		
83 Youth Vision Provides a grant-in-aid to Youth Vision to assist with its summer enrichment program for children in Craven County.	$15,000	NR		
84 The Family Place Provides a grant-in-aid to The Family Place for operational support.	$10,000	NR		
85 Boys and Girls Clubs of Wayne County, Inc. Provides a grant-in-aid to the Boys and Girls Clubs of Wayne County - Mt. Olive Unit for operational support.	$5,000	NR		
86 Dillard/Goldsboro Alumni and Friends, Incorporated Provides a grant-in-aid to the Dillard/Goldsboro Alumni and Friends, Incorporated for the Dillard Alumni Community Service Organization for an after-school enrichment program	$10,000	NR		

87 First Baptist Church of Clinton, Inc.
Provides a grant-in-aid to the First Baptist Church of Clinton, Inc. for operational support of a homeless shelter. $5,000 NR

88 The Riley Hill Family Life Center
Provides a grant-in-aid to The Riley Family Life Center for educational and community services. $15,000 NR

89 Anita Stroud Foundation, Inc.
Provides a grant-in-aid to the Anita Stroud Foundation, Inc. for an after-school program for children in public housing. $35,000 NR

90 The Young Men's Christain Association of Greater Charlotte
Provides a grant-in-aid to The Young Men's Christain Association of Greater Charlotte for the McCrorey Family Branch YMCA for equipment upgrades. $10,000 NR

91 Urban League of Central Carolinas, Inc.
Provides a grant-in-aid to the Urban League of Central Carolinas, Inc. for operational support. $5,000 NR

92 Dillard Educational and Economic Development Service, Inc.
Provides a grant-in-aid to the Dillard Educational and Economic Development Service, Inc. for programs for at-risk youth. $5,000 NR

93 Orange Congregation in Mission, Inc.
Provides a grant-in-aid to the Orange Congregation in Mission, Inc. to provide emergency services to residents. $5,000 NR

94 Cedar Grove Missionary Baptist Association, Inc.
Provides a grant-in-aid to the Cedar Grove Missionary Baptist Association, Inc. for emergency services for poor and needy residents. $5,000 NR

95 Black Child Development Institute of Greensboro, Inc.
Provides a grant-in-aid to the Black Child Development Institute of Greensboro, Inc. for operational support. $5,000 NR

96 Greensboro Lifeskills Center
Provides a grant-in-aid to the Greensboro Lifeskills Center for operational support. $10,000 NR

97 Young Men's Christian Association of High Point, Inc.
Provides a grant-in-aid to the Young Men's Christian Association of High Point, Inc. for the Carl Chavis Memorial Branch YMCA to provide public services and enrichment programs. $13,000 NR

98 Faith Matters
Provides a grant-in-aid to Faith Matters to assist low-income women and their families psychological, psychosocial and economic needs related to welfare reform $5,000 NR

99 Town of Tabor City
Provides a grant-in-aid to the Town of Tabor City for operational support of Club 15. $10,000 NR

100 Zeta Phi Beta Sorority, Inc.
Provides a grant-in-aid to the Zeta Phi Beta Sorority, Inc. for youth enrichment mentoring programs. $5,000 NR

101 Mt. Sinai Foundation, Incorporated
Provides a grant-in-aid to the Mt. Sinai Foundation, Incorporated in Fayetteville, NC for a youth skills project. $5,000 NR

102 Hoke County Youth and Family Services, Inc.
Provides a grant-in-aid to Hoke County Youth and Family Services, Inc. for intervention and prevention programs for at-risk youth and families. $5,000 NR

103 Area Day Reporting Program for Youth
Provides a grant-in-aid to the Area Day Reporting Program for Youth for after-school and drop-out prevention programs. $25,000 NR

104 The Carying Place, Incorporated
Provides a grant-in-aid to The Carying Place, Incorporated for support services for homeless people. $10,000 NR

105 Winston-Salem Urban League
Provides a grant-in-aid to the Winston-Salem Urban League Mentoring Program for drop-out prevention. $30,000 NR

106 Mud Castle Community Development Corporation
Provides a grant-in-aid to the Mud Castle Community Development Corporation for operating support of at-risk children's programs. $5,000 NR

107 Community Boys & Girls Club of Wilmington, NC, Inc.
Provides a grant-in-aid to the Community Boys & Girls Club of Wilmington, NC, Inc. for educational programs. $20,000 NR

108 Central Children's Home of North Carolina, Inc.
Provides a grant-in-aid to Central Children's Home of North Carolina, Inc. to support programs and activities for children in residential group home programs. $25,000 NR

109 The Carousel Center, Inc.
Provides a grant-in-aid to The Carousel Center, Inc. which provides a child-friendly environment for victims of child abuse and neglect. $25,000 NR

110 Hillsborough Exchange Club Center for the Prevention of Children Abuse
Provides a grant-in-aid to the Hillsborough Exchange Club Center for the Prention of Children Abuse for operational support. $5,000 NR

	FY 05-06		FY 06-07	
(9.0) Division of Child Development				
111 Replaces TEACH State funds with CCDF Block Grant Funds Replaces the TEACH Scholarship state appropriations with the Child Care Fund Development Block Grant.	($2,600,000)	NR		
112 Child Care Subsidy Provides funding to reduce the child care subsidy waiting list.	$3,600,000	NR		
(11.0) Division of Public Health				
113 Newborn Screening Laboratory Fee Increases the fee for the newborn lab screenings from $10.00 to $14.00 per initial patient specimen and reduces state appropriations. The fee increase is effective September 1, 2005.	($370,690)	R	($370,690)	R
114 Public Health Incubators Provides funding for public health incubators.	$1,000,000	R	$1,000,000	R
115 Public Health Improvements Provides funding for local public health departments receiving accreditation. In addition, provides funding for the accreditation board, board staff, and others involved with the accreditation process for local public health departments.	$700,000 1.00	R	$700,000 1.00	R
116 Interpreter Services for Local Health Departments Establishes a pilot program to fund interpreter services for local public health departments.	$250,000	R	$250,000	R
117 School Nurses Provides funding for fifty school nurses. These nurses will participate in the Child and Family Support Teams as applicable.	$2,500,000	R	$2,500,000	R
118 Eye Exams Provides funding to establish a model program to provide eye examinations for needy children who are in child care centers and preschools.	$2,000,000	R	$2,000,000	R
119 Vital Records Automation Provides funding for the automation of the vital records system in North Carolina.	$100,000	NR	$1,400,000	NR
120 Vital Records Improvements Provides funding for two positions to process vital records.	$74,748 2.00	R	$74,748 2.00	R
121 Arthritis Funds an arthritis program in Mecklenburg County.	$25,000	NR		

	FY 05-06		FY 06-07	
122 Healthy Start Foundation				
Provides contract funding to the Healthy Start Foundation for efforts to reduce infant mortality and morbidity.	$200,000	NR		
123 Minority Pharmacist Recruitment				
Provides funding to develop a pilot program for the recruitment of minority students into pharmacy schools.	$300,000	NR		
124 AIDS Drug Assistance Program (ADAP)	$1,000,000	R	$1,000,000	R
Provides increased funding for the AIDS Drug Assistance Program				
125 Early Intervention	$5,000,000	R	$5,000,000	R
Provides funds for the provision of services for the Early Intervention program				
126 Strike Out Stroke	$100,000	R	$100,000	R
Provides funding for the Strike-Out-Stroke program				
127 Healthy Carolinians	$100,000	R	$100,000	R
Provides funding for the activities of Healthy Carolinians.	$400,000	NR		
128 Health Disparities Initiative				
Provides funding for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI). The CFEHDI program will provide grants-in-aid to faith-based and community-based organizations to close the gap in health status of African-Americans, Hispanics/Latinos, and American Indians. The focus will be on reducing infant mortality, HIV/AIDS and other sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths.	$2,000,000 1.00	NR		
129 Bladen County Health Department				
Provides a grant-in-aid to the Bladen County Health Department.	$50,000	NR		
130 Poplar Grove Missionary Baptist Church				
Provides a grant-in-aid to Poplar Grove Missionary Baptist Church to sponsor a health screening activity and provide information about available health services.	$5,000	NR		
131 Community Clinic of Rutherford County				
Provides a grant-in-aid to the Community Clinic of Rutherford County.	$15,000	NR		
132 Davidson Medical Ministries Clinic, Inc.				
Provides a grant-in-aid to the Davidson Medical Ministries Clinic, Inc. for medical services and prescription drugs for the uninsured and those citizens living at or below the poverty level.	$25,000	NR		

133 Raleigh-Wake County Dental Society Community Dental Health Program, Inc.

Provides a grant-in-aid to the Raleigh-Wake County Dental Society Community Dental Health Program, Inc. for the Wake Smiles program to assist in development, operation, and expansion of the organization's dental health care program for indigent and disadvantaged Wake County residents. $210,000 NR

134 Tammy Lynn Center, Inc.

Provides a grant-in-aid to the Tammy Lynn Center, Inc. for the delivery of Early Intervention Services. $20,000 NR

135 Northhampton Recreation and Cultural Arts Center, Inc.

Provides a grant-in-aid to Northampton Recreation and Cultural Arts Center, Inc. for its Wellness and Cultural Complex. $20,000 NR

136 American Project Access Network, Inc.

Provides a grant-in-aid to the American Project Access Network, Inc. for the formation of an association that will replicate Asheville's Project Access program in various North Carolina communities. Project Access is an organized charity care program that provides free specialty care for individuals treated by "safety net" clinics whose treatment needs exceed the capacity and/or expertise of the treating clinic. $100,000 NR

137 Mission Hospitals, Inc.

Provides a grant-in-aid to Mission Hospitals, Inc. for the completion of the new Children's Outpatient Center at Mission Hospitals, Inc. in Asheville, N.C. $1,000,000 NR

138 Receipt Supported Position - Traumatic Brain Injuries

Creates three receipt-supported positions within the Division of Public Health, Chronic Disease and Injury Prevention Section, Injury & Violence Prevention Branch.

Public Health Communication Specialist - $51,044
Public Health Epidemiologist - $58,389
Public Health Evaluator - $51,044

These positions are 100% receipt-supported through the Centers for Disease Control and Prevention, Traumatic Brain Injury Extended Surveillance and Traumatic Brain Injury Emergency Department Surveillance.

139 Receipt Supported Position - Youth Suicide Prevention

Creates one position within the Division of Public Health.

Public Health Program Consultant II @$51,044

This position is 100% receipt-supported through the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services.

140 Receipt Supported Positions - HIV/AIDS

Creates seven receipt-supported positions within the Division of Public Health, Epidemiology Section, HIV/AIDS Branch.

3 Public Health program Consultant I's @$46,653,
Processing Assistant V - $34,452
3 Social Research Assistant II's - $40,789

These three positions will be 100% receipt-supported through the Centers for Disease Control HIV Morbidity and Risk Behavior Surveillance Continuation Grant.

141 Receipt Supported Positions - Nutrition Services

Creates one receipt-supported position with the Division of Public Health, Women and Children's Health Section, Nutrition Services Branch.

Public Health Program Supervisor II - $53,000

This position is 100% receipt-supported through Special supplemental Nutrition Program for Women, Infants, and Children (WIC) Program through the United States Department of Agriculture.

142 Receipt Supported Positions - Pfiesteria

Creates one receipt-supported position within the Division of Public Health, Epidemiology Section, Environmental Epidemiology Branch.

Chemist II - $54,970

This positions is 100% receipt-supported through the Centers for Disease Control, Expanding Surveillance Systems to include Pfiesteria, other Harmful Algal Blooms and Martine Toxins Program

143 Receipt Supported Positions - Nutrition Services

Creates two positions within the Division of Public Health, Women's and Children's Health Section.

2 Child Nutrition Program Assistants - @$50,000 each.

These positions are 100% receipt-supported through the Child and Adult Care Food Program and the Child and Adult Care Food Program Audit Funds.

144 Receipt Supported Position - Physical Activity and Nutrition

Creates one position within the Division of Public Health, Chronic Disease and Injury Prevention Section, Physical Activity and Nutrition Branch.

Information and Communications Specialist II - $46,653

The position is 100% receipt-supported through the Centers for Disease Control - Chronic Disease Prevention and Health Promotion Programs - Physical Activity, Nutrition and Obesity Component.

145 Receipt Supported Positions - Child Developmental Services Agency

Transfers twenty receipt-supported positions from Western Carolina University to the Division of Public Heath, for the purpose of operating the Children's Developmental Services Agency of the Smokies. The CDSA currently operated by Western Carolina University through contract is transferred to the Division of Public Health.

Habilitation Specialist III - $32,289
Habilitation Specialist III - $35,311
Habilitation Specialist III - $36,286
Habilitation Specialist III - $35,772
Habilitation Specialist III - $36,373
Habilitation Specialist III - $34,008
Habilitation Specialist III - $33,930
Habilitation Specialist III - $31,200
Habilitation Specialist III - $30,354
.50 Staff Psychologist II- $25,336
Two Staff Psychologist II's @$44,161
Two Educational Diagnostician II's @$32,940
Educational Diagnostician II - $37,886
Educational Diagnostician II - $42,066
Spanish Translator - $28,038
Physical Therapist II - $56,346
Occupational Therapist I - $51,260
Speech and Language Pathologist - $40,310

These positions will be funded through the Individuals with Developmental Disabilities Education Act and Medicaid receipts.

	FY 05-06		FY 06-07	
146 Transfer of State Positions				
Transfers twenty-two state supported positions from Western Carolina University to the Division of Public Health, for the purpose of operating the Children's Developmental Services Agency of the Smokies. The CDSA currently operated by Western Carolina University through contract is transferred to the Division of Public Health. .5 FTE Computing Support Technician I - $11,626 Two Program Assistant IV's @$21,576 Program Assistant IV - $29,326 Program Assistant IV - $29,627 Development Evaluation Center Assistant Director - $52,783 Staff Psychologist II - $42,292 Staff Psychologist II - $42,131 Staff Psychologist II - $46,334 Administrative Officer III - $44,923 .625 FTE Administrative Assistant I - $22,091 Processing Assistant IV - $25,047 Processing Assistant IV - $22,800 .75 Physical Therapist II - $46,800 Occupational Therapist I - $38,773 Occupational Therapist I - $42,424 Speech and Language Pathologist I - $56,466 Nutritionist III - $42,126 Habilitation Program Supervisor I - $40,125 Habilitation Program Coordinator - $33,363 Physician Extender II - $58,210 DEC Director - $60,916 These positions will be funded 100% with state funds. The transfer will not have any fiscal impact on the DPH CDSA Program budget because all funds supporting the transfer are currently located within the DPH budget code.	22.00		22.00	
(12.0) Office of the Secretary				
147 Prior Year Earned Revenue Requires the Department of Health and Human Services to budget prior year earned revenue and reduce state appropriations in the programs that received prior earned revenue.	($7,000,000)	NR	($7,000,000)	NR
148 Position Elimination Reserve Reduces funding by eliminating vacant or filled positions, reducing layers of management, and reducing related state administrative operating expenses within the Department. No direct service positions are to be eliminated.	($500,000)	R	($500,000)	R

	FY 05-06		FY 06-07	
149 Overrealized, Unbudgeted, Indirect Receipts Requires the Department of Health and Human Services to budget overrealized, unbudgeted, indirect receipts within Central Management administration and Department administration, and to reduce state appropriations in the programs and activities that received the overrealized, unbudgeted, indirect receipts.	($3,000,000)	NR		
150 Reserve for NC FAST Requires the Department of Health and Human Services to maintain the reserve for NC FAST at its current level.	($5,400,000)	R	($5,400,000)	R
151 NC FAST Appropriation Appropriates funding to support the development and implementation of NC FAST.	$4,900,000	NR	$6,000,000	NR
152 Community Health Centers Provides funding for grant-in-aids for Federally-qualified Health Centers, State-designated Rural Health Centers, Public Health Department Clinics, and other clinics.	$2,000,000	R	$2,000,000	R
153 Food Runners/Meals on Wheels Collaborative Provides a grant-in-aid to support to a multi-county program that prepares and delivers meals for the elderly and disabled.	$150,000	R	$150,000	R
154 N.C. Special Olympics, Inc. Provides funding for a grant-in-aid for the North Carolina Special Olympics, Inc.	$100,000	R	$100,000	R
155 ALS Association - Jim "Catfish" Hunter Chapter Provides a grant-in-aid to the ALS Association - Jim "Catfish" Hunter Chapter of the ALS Association to provide services within the State of North Carolina.	$400,000	R	$400,000	R
156 More At Four Program Expansion Provides funding for 3,200 additional slots for the biennium and an additional $150 in funding for each slot. Also, provides funding for five new positions.	$16,640,531 5.00	R	$16,640,531 5.00	R
157 Office of Rural Health-Critical Needs Funding for Eligible Hospitals Provides funding for grants or low-interest loans to eligible hospitals to offset operational losses due to increases in uncompensated care or to address other critical needs as determined by the Department of Health and Human Services.	$3,000,000	NR		
158 Juvenile Diabetes Research Foundation, Charlotte Chapter Provides a grant-in-aid to the Juvenile Diabetes Research Foundation, Charlotte Chapter.	$25,000	NR		
159 Right Moves for Youth, Inc. Provides funding for grant-in-aid for Right Moves for Youth, Inc.	$50,000	NR		

	FY 05-06		FY 06-07	
Total Legislative Changes	**($62,141,968)**	R	**($163,823,578)**	R
	($62,332,409)	NR	**($49,552,800)**	NR
Total Position Changes	86.50		119.50	
Revised Budget	**$4,033,235,902**		**$4,264,940,128**	

NATURAL
&
ECONOMIC
RESOURCES
Section H

2082

Agriculture and Consumer Services

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$52,243,772**		**$51,965,810**	
Legislative Changes				
Administration				
1 Reduce Inflationary Increases Reduce increases in the continuation budget for workers compensation, longevity and other expenses.	($202,701)	R	($202,701)	R
2 Funds for FFA Provide funds to the North Carolina Association of Future Farmers of America, Inc. (FFA) for the construction of new dining hall and recreation hall in White Lake, North Carolina.	$50,000 $250,000	R NR	$50,000	R
3 Farmland Preservation Trust Fund Provide funds for the Farmland Preservation Trust Fund.	$50,000	NR		
4 Agricultural Education Center Provide planning and development funds to Wayne County for a Regional Agricultural Education Center.	$200,000	NR		
5 Funds for Farmers Market Provide funds to Hertford-Northhampton Farmers Market, Inc.	$175,000	NR		
6 Funds for Community Fair Provide operating funds to the Town of Drexel for the Drexel Community Fair.	$25,000	NR		
7 Funds for Community Festival Provide operating funds to the Town of Fairmont for the Fairmont Farmers Festival.	$5,000	NR		
8 Operation Spring Plant, Inc. Provide funds for technical, educational, and financial assistance for African-American farmers in and around Faison, NC.	$25,000	NR		

	FY 05-06		FY 06-07	
Agronomic Services				
9 Replace General Funds with Receipts Replace General Funds for operations with revenue generated by increasing fees for Agronomic Sampling services to no more than the following maximum amounts: Increase fees for routine nematode samples from $2.00 to $3.00 generating $25,000 in additional revenue. Increase fees for routine waste samples from $4.00 to $5.00 generating $20,000 in additional revenue. Increase research fees for soil and nematode samples from $2.00 to $12.00 generating $10,000 in additional revenue. Increase research fees for plant, waste and solution samples from $4.00 to $12.00 generating $33,600 in additional revenue.	($88,600)	R	($88,600)	R
10 Replace General Funds with Receipts Replace General Funds for operations with revenue generated by implementing new fees for Agronomic Sampling services. Establishes a maximum $14.00 fee for out-of-state nematode samples; $26.00 fee for out-of-state plant, waste and solution samples; and a various fees for other out-of-state services.	($74,300)	R	($74,300)	R
Commercial Feed and Pet Food				
11 Replace General Funds with Receipts Increase registration fees for non-canned pet food registration as follows: Increase existing registration fees from $3.00 to $5.00; Increase existing registration fees from $30.00 to $40.00; and Increase existing registration fees from $33.00 to $45.00. Increases the registration fee for canned pet food from $10.00 to $12.00.	($60,200)	R	($60,200)	R
Marketing				
12 Reduce Funds for Farmer's Markets Reduce the appropriation for farmer's markets by 10%	($90,537)	R	($90,537)	R
13 Fund-Shift One Position Fund shift one position with the Cooperative Inspection Service to receipts.	($35,685) -1.00	R	($35,685) -1.00	R

	FY 05-06		FY 06-07	
Pesticide Section				
14 Pesticide Disposal Program Replace General Funds with funds from the Environmental Trust Fund for the pesticide disposal program	($222,407) -1.00	R	($222,407) -1.00	R
Seed Testing				
15 Replace General Funds with Receipts Increase seed inspection fees from $.02 to $.04 per 10 lb container.	($124,587)	R	($124,587)	R
State Fair				
16 Establish Receipt-Supported Positions Establish twenty (20) receipt-supported general utility workers and eight (8) building custodians at the North Carolina State Fair. General Utility Workers 20.0 $522,500 Building Custodians 8.0 $170,080				
Statistics Division				
17 Cash Rents Survey Provide funds to conduct a survey of cash rents paid for farmland for use by the Department of Revenue and the Use-Value Advisory Board in administering the Agriculture Present Use-Value property tax program	$25,000	R	$25,000	R
18 Establish Receipt Supported Position Establish one (1.0) federally-funded Printing Equipment Operator II position with a total cost of $30,097.				
Structural Pest Control				
19 Adjust Budgeted Receipts Reduce General Funds based on an increase in receipts.	($18,000)	R	($18,000)	R
Veterinary Services				
20 Replace General Funds with Receipts Increase histopath fee from $15.00 to $30.00 generating $113,233 in additional revenue. Increases EIA fee from $4.00 to $6.00 generating $39,082 in additional revenue.	($152,315)	R	($152,315)	R
21 Replace General Funds with Receipts Establish a $1.00 blood pour off fee and a $.04 vacuum tube handling fee.	($56,000)	R	($56,000)	R

Conference Report on the Continuation, Capital, and Expansion Budget	FY 05-06		FY 06-07	
22 Animal Shelter Inspections	$225,000	R	$225,000	R
Provide funds to implement the requirements of expanding the regulation and inspection of animal shelters. Establishes four (4.0) new positions in the Veterinary Services Division.	4.00		4.00	
Animal Welfare Program Director 1.0 Animal Welfare Program Coordinator 1.0 Animal Welfare Technician 1.0 Administrative Assistant 1.0				
Weights and Measures				
23 Replace General Funds with Receipts	($12,000)	R	($12,000)	R
Establish a $20 fee for a Scale Technician License.				
24 Fund Shift One Position	($28,394)	R	($28,394)	R
Fund existing position with Highway Funds transferred to the Department.	-1.00		-1.00	
25 Replace General Funds with Receipts	($67,200)	R	($67,200)	R
Increase public weighmaster fees from $12.00 to $19.00, generating $32,200 in additional revenue. Increases various calibration fees at the Standards Lab generating $35,000 in additional revenue.				
Total Legislative Changes	**($932,926)**	R	**($932,926)**	R
	$730,000	NR		
Total Position Changes	1.00		1.00	
Revised Budget	**$52,040,846**		**$51,032,884**	

Labor

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$14,198,496**		**$14,213,868**	
Legislative Changes				
Administration				
26 Eliminate 1.0 Vacant Position Eliminate Office Assistant position in Commissioner's Office.	($31,878) -1.00	R	($31,878) -1.00	R
27 Fund Shift 1.0 Position to Receipt Support Fund shift Accounting Clerk position in Administrative Services to elevator receipt support.	($36,030) -1.00	R	($36,030) -1.00	R
28 Eliminate Inflationary Increases Eliminate inflationary increases allowed in the continuation budget for Administrative Services, Information Technology, and the Commissioner's Office.	($1,755)	R	($1,755)	R
29 Reduce Operating Reduce various operating line items in Administrative Services, Labor Statistics, Information Technology, and the Information Office.	($24,461)	R	($24,461)	R
Labor Standards and Inspections				
30 Establish Mine and Quarry Safety Training Fee Authorize Mine and Quarry Bureau to establish a new safety training fee of up to $50 per participant and take a corresponding General Fund reduction.	($270,000) -4.50	R	($270,000) -4.50	R
31 Eliminate Inflationary Increases Eliminate inflationary increases allowed in the continuation budget for Apprenticeship, Employment Discrimination, Wage and Hour, and Mine and Quarry.	($5,669)	R	($5,669)	R
32 Reduce Operating Reduce various operating line items in Apprenticeship, Employment Discrimination, Wage and Hour, and Mine and Quarry.	($20,100)	R	($20,100)	R
33 Continue to Fund Apprenticeship Program General Fund dollars will partly restore funding for the Apprenticeship Program that is no longer available through the Worker Training Trust Fund.	$663,374 10.00	R	$663,374 10.00	R
OSH				
34 Eliminate Inflationary Increases Eliminate inflationary increases allowed in continuation budget for Occupational Safety and Health.	($47,424)	R	($47,424)	R

Conference Report on the Continuation, Capital, and Expansion Budget	FY 05-06		FY 06-07	
35 Reduce Operating Reduce various operating line items in Occupational Safety and Health.	($5,000)	R	($5,000)	R
Total Legislative Changes	**$221,057**	R	**$221,057**	R
Total Position Changes	3.50		3.50	
Revised Budget	**$14,419,553**		**$14,434,925**	

Environment & Natural Resources

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$167,189,338**		**$168,187,593**	
Legislative Changes				
(1.0) Administration				
36 Eliminate 1.0 Vacant Position Eliminate vacant Federal Legislative Programs Coordinator position.	($74,070) -1.00	R	($74,070) -1.00	R
37 Reduce Rent Reduce Regional Office rent line item	($50,000)	R	($50,000)	R
38 Fund One-Stop Permitting Program Positions Provide General Fund support for 2.0 One-Stop Permitting Program positions that have previously been supported through available funds.	$113,168 2.00	R	$113,168 2.00	R
39 Expand Express Permitting Program Statewide Expand the Express Permitting Program statewide by establishing and supporting 12.0 positions using existing receipts in the Express Review Fund.				
(1.0) Ecosystem Enhancement Program				
40 Fund Shift Ecosystem Enhancement Program Fund shift remainder of Ecosystem Enhancement Program to receipt support.	($235,439) -5.00	R	($235,439) -5.00	R
(2.0) Coastal Management				
41 Reduce Purchased Services Reduce various purchased services line items.	($10,000)	R	($10,000)	R
42 Reduce Supplies Reduce various supply line items.	($3,200)	R	($3,200)	R
43 Reduce Equipment Reduce various equipment line items.	($3,000)	R	($3,000)	R
(2.0) Environmental Health				
44 Eliminate 1.0 Vacant Position Eliminate Environmental Specialist III position in the On-Site Wastewater Section.	($61,040) -1.00	R	($61,040) -1.00	R

	FY 05-06		FY 06-07	
45 Reduce Purchased Services Reduce various purchased services line items.	($26,500)	R	($26,500)	R
46 Reduce Supplies Reduce various supply line items.	($10,000)	R	($10,000)	R
47 Reduce Equipment Reduce various equipment line items.	($2,000)	R	($2,000)	R
48 Reduce Other Expenses Reduce expenditures in the "Other Expenses" line item	($3,000)	R	($3,000)	R
49 Fund Shift Position to General Fund Support Fund shift West Nile Virus Control position previously supported through federal CDC grant funds to General Fund support.	$54,113 1.00	R	$54,113 1.00	R
(2.0) Land Resources				
50 Eliminate Mining Education Funds Eliminate funding for mining education programs.	($15,450)	R	($15,450)	R
51 Eliminate Inflationary Increases Eliminate inflationary increases allowed in the continuation budget for utilities and travel.	($10,407)	R	($10,407)	R
52 Reduce Contractual Services Reduce contractual services for county boundary program	($50,000)	R	($50,000)	R
53 Reduce Operating Reduce various operating line items.	($20,000)	R	($20,000)	R
(2.0) Marine Fisheries				
54 Reduce Boat Replacement Continuation Increase Reduce continuation increase for boat replacement and maintain current replacement schedule.	($14,693) ($92,000)	R NR	($14,693)	R
55 Eliminate Position Eliminate 1.0 Marine Fisheries Biologist II position.	($45,613) -1.00	R	($45,613) -1.00	R
56 Reduce Board Support Reduce transportation and subsistence line items for the Marine Fisheries Commission.	($30,000)	R	($30,000)	R

	FY 05-06		FY 06-07	
57 Reduce Operating Reduce various operating line items.	($50,000)	R	($50,000)	R
58 Oyster Rehabilitation Program Provide funds for a permanent oyster rehabilitation program	$575,000 4.00	R	$575,000 4.00	R
59 Receipt-Supported Position Establish 1.0 time-limited, permanent position supported by Atlantic Coastal Cooperative Statistics Program Grant funds. This position will collaborate with the National Marine Fisheries Service and help fulfill federal fishery data requirements. Computer Consultant II (1.0) $49,217				
(2.0) Pollution Prevention and Env. Assistance				
60 Reduce Purchased Services Reduce various purchased services line items.	($5,000)	R	($5,000)	R
61 Reduce Supplies Reduce various supply line items.	($8,000)	R	($8,000)	R
62 Reduce Equipment Reduce various equipment line items.	($5,000)	R	($5,000)	R
63 Fund Shift Position Fund shift a position from 60% federal receipts to 100% federal receipts.	($18,676) -0.40	R	($18,676) -0.40	R
(2.0) Waste Management				
64 Fund Shift Position Fund shift Information/Communications Specialist III position to hazardous waste receipts.	($48,673) -1.00	R	($48,673) -1.00	R
65 Reduce Purchased Services Reduce various purchased services line items.	($94,000)	R	($94,000)	R
66 Reduce Supplies Reduce various supply line items.	($20,000)	R	($20,000)	R
67 Reduce Aid and Public Assistance Reduce the aid and public assistance line items.	($24,235)	R	($24,235)	R

	FY 05-06		FY 06-07	
68 Mercury Switch Removal Program Funds Provides funds to help support the implementation of the provisions of the Mercury Switch Removal bill. These funds are contingent upon the passage of House Bill 1136.	$89,504	R	$28,770	R
(2.0) Water Quality				
69 Fund Shift Positions Fund shift 5.0 vacant positions to federal 106 grant receipts. The continuation of these positions is subject to the availability of federal grant receipt support. Environmental Specialist II (1.0) ($40,807) Processing Assistant V (1.0) ($34,869) Environmental Supervisor I (1.0) ($49,455) Soil Scientist II (1.0) ($47,362) Environmental Engineer II (1.0) ($54,070)	($226,563) -5.00	R	($226,563) -5.00	R
70 Reduce Inflationary Increases Reduce inflationary increases allowed in the continuation budget for electrical services.	($23,908)	R	($23,908)	R
71 Reduce Purchased Services Reduce various purchased services line items.	($65,000)	R	($65,000)	R
72 Reduce Supplies Reduce various supply line items.	($60,000)	R	($60,000)	R
73 Reduce Equipment Reduce various equipment line items.	($3,000)	R	($3,000)	R
74 Reduce Operating Reduce various operating line items.	($250,000)	R	($250,000)	R
75 Ferrymon Program Provide funds for the Ferrymon Program	$300,000	NR		
76 Receipt-Supported Position Establish 1.0 permanent position supported by federal EPA 106 grant funds. This position will plan, coordinate, and support the NPDES Discharge Monitoring Coalition program Environmental Specialist III (1.0) $47,189				
(2.0) Water Resources				
77 Reduce Contractual Services Reduce the contractual services line item	($50,000)	R	($50,000)	R

	FY 05-06		FY 06-07	
78 Reduce Purchased Services Reduce various purchased services line items.	($10,000)	R	($10,000)	R
79 Reduce Supplies Reduce various supply line items.	($5,000)	R	($5,000)	R
80 Groundwater Monitoring Provide funds for monitoring groundwater levels.	$125,000	R	$125,000	R
(3.0) Aquariums				
81 Pine Knoll Shores Operating Reserve Provide funding for an operating reserve at the Pine Knoll Shores Aquarium from the General Fund. The operating reserve and positions created with General Fund monies are in lieu of the receipt-supported reserve expenditures and positions that were authorized in the Recommended Continuation Budget 2005-2007.	$1,700,000 31.00	R	$1,700,000 31.00	R
82 Oyster Hatchery Research Provide funding to the Division of North Carolina Aquariums to plan for the development of an oyster hatchery and public education program regarding the hatcheries at each of the three North Carolina aquariums.	$600,000	R	$600,000	R
(3.0) Forest Resources				
83 Reduce Funding for Equipment and Vehicles Reduce funding increases allowed in the continuation budget for equipment and vehicles within the Division of Forest Resources. With the reduction, the Division would still receive a $1,809,500 increase to these line items in the continuation budget.	($1,036,921)	R	($1,036,921)	R
84 Reduce Operating Support Reduce operating support to the Division of Forest Resources.	($25,000)	R	($25,000)	R
85 Establish 3.0 positions for Fire Suppression Provide funding for 3.0 new Forestry Pilot II positions. These positions would aid in improving early detection of wildland fire and providing initial attack support.	$297,618 3.00	R	$297,618 3.00	R
86 Establish 3.0 Water Quality Forester positions Provide funding for 3.0 Water Quality Forester positions. These positions would be responsible for preventing and controlling water quality degradation.	$132,879 3.00	R	$132,879 3.00	R

	FY 05-06		FY 06-07	
87 Forest Resources Receipt Supported Position Allows for the establishment of 1.0 full-time permanent position with the Division of Forest Resources from aircraft deployment receipts. This position will be responsible for the Division's fixed wing and rotary wing fleet parts program Program Assistant V 1.0 $31,941				
88 Forest Resources Receipt Supported Positions Establish 3.0 time-limited positions in the Division of Forest Resources upon receipt of federal grant funds. No state funds will be expended on these positions. Fire & Rescue Training Instructor 1.0 $45,605 Extension Education & Training Specialist I 1.0 $37,892 Forester III 1.0 $44,755				
(3.0) Museum of Natural Sciences				
89 NC Museum of Natural Science Continuation of UNC-TV Show Provide funds to continue production with UNC-TV of season two of Exploring NC.	$250,000	NR		
(3.0) NC Zoological Park				
90 Eliminate Vacant Position Eliminate a vacant Marketing Director position.	($60,165) -1.00	R	($60,165) -1.00	R
91 NC Zoological Park Receipt Supported Positions Establish 4.0 two-year time-limited, full-time positions in the Division of the NC Zoological Park from non-capital gift revenue. These positions are involved in the construction of a new Elephant/Rhino exhibit and holding facilities. Maintenance Mechanic II 4.0 $136,500				
(3.0) Parks and Recreation				
92 Reduce Operating Reserve Reduce the increase in operating reserve support allowed in the continuation budget for the Division of Parks and Recreation. With this reduction, the Division would receive a $2.2 million increase in operating reserve support in FY 2005-06.	($1,000,000)	R	($1,000,000)	R
93 Reduce Operating Support Reduce operating support for the Division of Parks and Recreation.	($25,000)	R	($25,000)	R

	FY 05-06		FY 06-07	
94 Parks and Recreation Receipt Supported Position Establish 1.0 permanent, full-time position in the Division of Parks and Recreation. This position will plan, supervise and monitor design and construction contracts for park facilities funded by the Parks and Recreation Trust Fund. Facility Engineering Specialist 1.0 $43,907				
(3.0) Soil and Water Conservation				
95 Eliminate Vacant Position Eliminate a vacant Soil Specialist position.	($40,718) -1.00	R	($40,718) -1.00	R
96 Reduce Operating Support Reduce various operating line items within the Division of Soil and Water Conservation	($40,000)	R	($40,000)	R
97 Establish 1.0 Position Establish 1.0 permanent position in the Division of Soil and Water Conservation for the expansion of a pilot program that inspects animal waste management systems. Environmental Specialist II 1.0	$40,000 1.00	R	$40,000 1.00	R
(4.0) Reserves and Transfers				
98 Eliminate Water Quality Workgroup Funds Eliminate funding for Water Quality Workgroup research grants.	($87,300)	R	($87,300)	R
99 Shift Beaver Management Assistance Program funding to receipt support Fund shift $100,000 R of the Beaver Management Assistance Program from General Fund support in the Wildlife Resources Commission to available receipt support in the Department of Transportation.	($100,000)	R	($100,000)	R
100 Shift LEO Salary Adjustment Support to Receipts Shift funding for a LEO salary adjustment that has been historically funded with General Fund monies to existing Wildlife Resources Commission receipts.	($456,481)	R	($456,481)	R
101 Resource Conservation and Development Councils Provides each of the State's ten Resource Conservation and Development Councils with a grant of $25,000.	$250,000	NR		
102 Superfund State Match Funds Provides funds to meet the 10% state match requirement for drawing down the maximum available federal funds for the clean up of National Priority List sites.	$1,000,000	NR		

	FY 05-06		FY 06-07	
103 Clean Water SRF Match Funds Provide funds to meet the 20% state match requirement for drawing down the maximum available federal funds for the Clean Water State Revolving Fund.	$3,889,571	NR		
104 Drinking Water SRF Match Funds Provide funds to meet the 20% state match requirement for drawing down the maximum available federal funds for the Drinking Water State Revolving Fund.	$1,415,980	NR		
105 Increase Grassroots Funding Increase funding to the Grassroots Science Museums for two additional museums: Eastern and Port Discover.	$100,000	R	$100,000	R
106 Funds for Global Warming Initiatives, Inc. Provides funds for Global Warming Initiatives, Inc., a non-profit that promotes awareness and reporting of greenhouse gas emissions.	$10,000	NR		
107 Henderson-Vance Cleanup Funds Provide funds to the Friends of Clean Up Henderson to support cleanup efforts.	$100,000	NR		
108 Farmville-Greene County Water Project Provide $1 million to the Town of Farmville and $1 million to Greene County for the Farmville-Greene County water project.	$2,000,000	NR		
109 Wildlife Resources Commission Receipt Supported Positions Allows for the establishment of the following 8.0 positions.				

Wildlife Technician II	3.0	$107,886	75% Federal / 25% Wildlife
Wildlife Technician III	1.0	$ 32,662	NMFS and FWS Section 6
Wildlife Technician III	1.0	$ 32,662	Waterfowl Fund
Processing Assistant V	1.0	$ 29,814	Wildlife Fund
Applications Analyst	1.0	$ 69,806	Wildlife Fund
Applications Specialist	1.0	$ 91,250	Wildlife Fund

110 Partnership for the Sounds Increase funding to enhance tourism marketing and economic development in the region. Up to $35,000 may be used to fund buildings and exhibit repairs needed at the Columbia Theater Cultural Resources Center in Tyrrell County.	$1,535,000	NR		
111 Town of Bryson City Grant-In-Aid Provide a grant-in-aid to the Town of Bryson City for a wastewater treatment facility.	$25,000	NR		

	FY 05-06		FY 06-07	
Total Legislative Changes	**($675,770)**	R	**($736,504)**	R
	$10,683,551	NR		
Total Position Changes	28.60		28.60	
Revised Budget	**$177,197,119**		**$167,451,089**	

Commerce

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$35,532,306**		**$35,583,572**	
Legislative Changes				
Administrative Services				
112 Reduce Inflationary Increases Reduce increases for office equipment and legal services.	($24,287)	R	($24,287)	R
113 Eliminate Vacant Position Eliminate one Community Development Specialist position for the Wanchese Seafood Industrial Park that has not been filled since 3/31/2000.	($48,287) -1.00	R	($48,287) -1.00	R
114 Wanchese Seafood Industrial Park Provide operating funds for security at the Park.	$48,287	R	$48,287	R
Business and Industry				
115 Reduce Funds for Purchased Services and Equipment Reduce expenditures for operations based on historical reversions.	($67,000)	R	($67,000)	R
Community Assistance				
116 Eliminate Vacant Position Eliminate one Community Development Planner I position that has not been filled since 7/1/04.	($53,377) -1.00	R	($53,377) -1.00	R
117 Reduce Funds for Purchased Services and Equipment Reduce expenditures for operations based on historical reversions.	($35,000)	R	($35,000)	R
Executive Aircraft				
118 Reduce Funds for Purchased Services, Supplies and Equipment Reduce expenditures for operations based on historical reversions.	($100,000)	R	($100,000)	R
119 Reduce Inflationary Increases Reduce increases for purchased services for FY 05/06 and reduces funds for purchased services and repairs for FY 06/07.	($43,150)	R	($123,150)	R
120 Eliminate Vacant Position Eliminate vacant Executive Pilot II position that has not been filled since 7/1/2004.	($64,634) -1.00	R	($64,634) -1.00	R

Finance Center

121 Funds for One North Carolina Fund

Provide funds for the One North Carolina Fund for FY 05/06. $6,000,000 NR

Industrial Commission

122 Budget Over-Collected Receipts

Require the Department to reduce General Funds for the Industrial Commission based on a projected over-collection of fees. ($125,000) NR

123 Establish Receipt-Supported Positions

Establish four (4) receipt-supported positions with the Industrial Commission.

Legal Specialist 1	1.0	$45,280
Program Assistant V	1.0	$29,516
Special Deputy Commissioners	2.0	$113,438

124 Establish Receipt-Supported Positions

Establish thirteen (13) receipt-supported positions in the Industrial Commission with revenue generated by implementing a fee for the required review of Form 21 Agreements.

Administrative Officer II Positions (Workers' Comp. Fraud Investigators)	2.0
Administrative Officer II Positions (Ombudsman)	2.0
Program Assistant V	2.0
Receptionist III	1.0
Industrial Safety Representative II	4.0
Special Deputy Commissioners	2.0

Total Receipts Required $628,099

International Trade

125 Eliminate Inflationary Increase for Purchased Services ($38,144) R ($38,144) R

Eliminate an increase for purchased services for the biennium

Marketing

126 Furniture Market Advertising

Provide funds to promote the North Carolina furniture industry, including the International Home Furnishings Market. $750,000 NR

127 Industrial Marketing

Provide funds to promote North Carolina industries. $750,000 NR

	FY 05-06		FY 06-07	
Policy and Research				
128 Eliminate Vacant Position	($26,244)	R	($26,244)	R
Eliminate a vacant Processing Assistant III position that has not been filled since 1/1/04.	-1.00		-1.00	
129 North Carolina Economic Development Information System	$297,898	R	$297,898	R
Establish one (1.0) Data Base Administrator position and provide operating support for the NC EDIS.	$500,000	NR	$500,000	NR
	1.00		1.00	
Reserves and Transfers				
130 Duplin Agribusiness Center				
Provide funds to Duplin County to match federal and local funds to construct the Duplin Commons Agribusiness Center.	$500,000	NR		
131 Gaston County Economic Development Commission				
Provide funds for the Gaston County Economic Development Commission for economic development and job creation initiatives in response to significant loss of textile industry and textile industry related jobs.	$300,000	NR		
132 Pilot Economic Development Project				
Provide funds to Kerr-Tar Regional Economic Development Corporation for a four-county, pilot project designed by the University of North Carolina at Chapel Hill.	$4,000,000	NR		
133 Tourism Promotion				
Provide funds to the Town of Valdese to promote travel and tourism	$25,000	NR		
134 Local Economic Development				
Provide funds to the Town of Spindale for economic development.	$25,000	NR		
135 21st Century Development				
Provide funds to Caswell County to support local 21st Century initiatives.	$5,000	NR		
136 Hoke County Regional Industrial Park				
Provide funds to aid in marketing and advertising the Hoke County Regional Industrial Park.	$100,000	NR		
137 Local Tourism Promotion				
Provide funds to the Forsyth Development Tourism Authority for the Winston Salem Convention and Visitors Bureau to advertise and promote travel and tourism in the Forsyth County area.	$100,000	NR		
Science and Technology				
138 Reduce Funds for Purchased Services and Equipment	($20,000)	R	($20,000)	R
Reduce expenditures for operations based on historical reversions.				

	FY 05-06		FY 06-07	
139 Establish Position Provide funds for the Deputy Director/Chief Policy Analyst position for the N.C. Board of Science and Technology. This position has historically been funded through the University of North Carolina.	$80,000 1.00	R	$80,000 1.00	R
Travel and Tourism				
140 Budget Over-Collected Receipts Require the Department to budget receipts that have been consistently collected during the previous three fiscal years.	($45,000)	R	($45,000)	R
141 Eliminate Inflationary Increase Eliminate increase for legal services for both years of the biennium	($41,369)	R	($41,369)	R
142 Reduce Funds for Purchased Services, Supplies and Equipment Reduce expenditures for operations based on historical reversions.	($200,000)	R	($200,000)	R
143 Statewide Marketing Reserve Provide funds for promoting travel and tourism statewide.	$1,000,000	R	$1,000,000	R
144 Heritage Tourism Provide funds for operations for Blue Ridge National Heritage Area.	$50,000	R	$50,000	R
145 Heritage Tourism Positions Provide funds to the Division of Travel and Tourism to support a Piedmont-Triad Heritage Tourism Officer position and a Maritime Area Heritage Tourism Officer position.	$100,000 2.00	R	$100,000 2.00	R
146 Tourism Promotion Provide promotional funds for an entertainment complex in Roanoke Rapids.	$500,000	NR		
Utilities Commission				
147 Establish Receipt-Supported Position Establish one (1.0) Attorney IV position at $94,204 for the Utilities Commission Public Staff.				
Welcome Centers				
148 Reduce Funds for Purchased Services, Supplies and Equipment Reduce expenditures for operations based on historical reversions.	($45,000)	R	($45,000)	R

	FY 05-06		FY 06-07	
Total Legislative Changes	**$724,693**	R	**$644,693**	R
	$13,430,000	NR	**$500,000**	NR
Total Position Changes	0.00		0.00	
Revised Budget	**$49,686,999**		**$36,728,265**	

Commerce - State Aid

	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$11,222,085**		**$11,222,085**	
Legislative Changes				
149 NC Institute of Minority Economic Development				
Increase funding for the NC Institute of Minority Economic Development by $1 million NR	$1,000,000	NR		
150 NC Assoc. of Community Development Corporations (CDCs)				
Increase funding for the NC Assoc. of CDCs by $200,000 NR	$200,000	NR		
151 Minority Support Center				
Provide $2.5 million NR for the Minority Support Center to be allocated as follows: $1.25 million to the Generations Credit Union and $1.25 million to the Latino Community Credit Union.	$2,500,000	NR		
152 Community Development Initiative (CDI)	$500,000	R	$500,000	R
Increase the General Fund appropriation for CDI by $500,000 R and $1.5 million NR	$1,500,000	NR		
153 Sandhills Family Heritage Association				
Provide funds to the Sandhills Family Heritage Association for land preservation in Harnett, Cumberland, Richmond and Moore Counties.	$15,000	NR		
154 Coalition of Farm and Rural Families				
Provide funding for the Coalition of Farm and Rural Families.	$125,000	NR		
155 Manchester CDC, Inc.				
Provide funds to Manchester CDC, Inc. to develop cultural and recreational activities in the Manchester Township of Cumberland County.	$10,000	NR		
156 River City Community Development Corporation				
Provide a grant-in-aid to River City CDC to construct the Renaissance Square Business Incubator and Training Center.	$100,000	NR		
157 Advanced Vehicle Research Center				
Provide a $7.5 million NR appropriation to the Advanced Vehicle Research Center Reserve. These funds may be transferred to the Department of Commerce for allocation to the Advanced Vehicle Research Center of North Carolina, Inc. for the construction and operation of the Center.	$7,500,000	NR		

	FY 05-06		FY 06-07	
158 Rebuilding Broken Places Community Development Corporation				
Provide a grant-in-aid to Rebuilding Broken Places CDC to support affordable housing, alternative education, and housing for the aged programs.	$10,000	NR		
159 Liberty Community Development Corporation, Inc.				
Provide a grant-in-aid to Liberty CDC, Inc. to assist small businesses with start-up costs and capital purchases in the Liberty Street development area.	$20,000	NR		
160 Microenterprise Loan Program of Winston-Salem, Forsyth County, Inc.				
Provide a grant-in-aid to the Microenterprise Loan Program of Winston-Salem, Forsyth County, Inc. to provide grants and loans to small businesses and non-profit organizations.	$20,000	NR		
161 Roxboro Uptown Development Corporation				
Provide a grant-in-aid to the Roxboro Uptown Development Corporation to provide completion money for a public pavilion project.	$10,000	NR		
162 Henderson-Vance Downtown Development Commission, Inc.				
Provide a grant-in-aid to Henderson-Vance Downtown Development Commission, Inc. to support the development of the downtown business district.	$5,000	NR		
163 Gateway Community Development Corporation				
Provides a grant-in-aid to Gateway Community Development Corporation to help support a housing repair initiative to address the problem of abandoned and deteriorating housing.	$25,000	NR		
Regional Economic Development Commissions				
164 Funding for Vision Plan Implementation				
Provide $250,000 to each of the seven Regional Economic Development Commission for the continued implementation of their vision plans.	$1,750,000	NR		
Total Legislative Changes	**$500,000**	R	**$500,000**	R
	$14,790,000	NR		
Total Position Changes				
Revised Budget	**$26,512,085**		**$11,722,085**	

N.C. Biotechnology Center

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$9,083,395**		**$9,083,395**	
Legislative Changes				
NC Biotechnology Center				
165 Increase funding for the NC Biotechnology Center	$1,500,000	R	$1,500,000	R
Increase support for New Jobs Across North Carolina: A Strategic Plan for Growing the Economy Statewide through Biotechnology.	$1,500,000	NR		
Total Legislative Changes	**$1,500,000**	R	**$1,500,000**	R
	$1,500,000	NR		
Total Position Changes				
Revised Budget	**$12,083,395**		**$10,583,395**	

Rural Economic Development Center

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$4,802,607**		**$4,802,607**	
Legislative Changes				
Rural Economic Development Center				
166 Rural Economic Infrastructure Program Provide funding to continue the North Carolina Infrastructure Program	$20,000,000	R	$20,000,000	R
167 Community Development Centers Grant Program Provide funding to increase the CDC Grants Program, providing additional assistance to minority community development corporations.	$250,000	NR	$250,000	NR
168 Grant-in-Aid for Rural Development Provide funding for rural development projects in Pitt, Martin and Hertford County.	$225,000	NR		
Total Legislative Changes	**$20,000,000**	R	**$20,000,000**	R
	$475,000	NR	**$250,000**	NR
Total Position Changes				
Revised Budget	**$25,277,607**		**$25,052,607**	

JUSTICE
&
PUBLIC SAFETY
Section I

Judicial

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$341,443,618**		**$345,243,618**	
Legislative Changes				
Equipment and Other Reserves				
1 Reserve for DWI Task Force Recommendations Provides funds to implement the provisions of HB 1048, SB 1069, or substantially similar bill implementing the Governor's DWI Task Force recommendations. Funds may be used to establish positions or for other purposes as authorized in the ratified bill.	$1,137,000	R	$1,869,834	R
2 Mecklenburg Telephone System Appropriates $1.5 million non-recurring to equip the new Mecklenburg County Courthouse with a telephone system	$1,500,000	NR		
3 Reduce Salary Reserve Takes a recurring reduction to the AOC Salary Reserve Fund, which is generated by the difference between the budgeted salary for a position, and the lower amount paid for the position. This is an agency recommendation.	($500,000)	R	($500,000)	R
4 Reduce Equipment and Reserves Takes a $500,000 recurring reduction in the line items for equipment and other reserves.	($500,000)	R	($500,000)	R
5 Reduce Pay Plan and Longevity Reserves Takes a reduction in the reserve accounts which support judicial pay plans and the judicial longevity. This cut is possible due to recent turnover which brings down the number of positions eligible for these benefits. This is an agency recommendation.	($933,897)	R	($933,897)	R
Family Court				
6 Reduce Family Court Program Reduces appropriation to Family Court program by $155,000. Eliminates one position in the central office ($80,000) and one secretarial position in District 26 ($40,000), and takes a $35,000 reduction in operating line items. Appropriates $175,000 NR to establish a Family Court Program in Judicial District 10, Wake County.	($155,000) $175,000 -2.00	R NR	($155,000) -2.00	R
Superior Court				
7 Create Mecklenburg Business Court Establishes a Business Court site in Mecklenburg County similar to the one currently operating in Guilford County.	$76,000 $149,000 2.00	R NR	$76,000 2.00	R

	FY 05-06		FY 06-07	
Systemwide				
8 Create New Judicial Districts Provides funding to split two current judicial districts. Superior Court District 20A (Anson and Richmond) and 20B (Stanly and Union) will be reconfigured with Stanly moving into 20A, leaving Union alone as 20B, effective December 1, 2005. District Court District 20 currently includes all four counties, but will align with the Superior Court District effective December 1, 2005. The Prosecutorial District will realign with the same county split effective January 1, 2007. Superior and District Court District 29, encompassing Henderson, McDowell, Polk, Rutherford, and Transylvania Counties, will be split into 29A (McDowell and Rutherford) and 29B (Henderson, Polk, and Transylvania) effective December 1, 2005. The Prosecutorial District will split on the same lines effective January 1, 2007. The current Trial Court Administrator will continue to serve both districts.	$148,039 4.00	R	$561,027 9.00	R
9 Establish Receipt-Supported Positions The Administrative Office of the Courts has received grants to create the following time-limited positions. These positions will expire when their grant funding runs out. Position — Salary Assistant District Attorney (7 pos) — $328,114 Victim/Witness Legal Assistant (2 pos) — $57,000 DA Investigator — $35,000 Case Manager (2 pos) — $72,000 Drug Court Coordinator — $36,000				
Trial Courts				
10 Durham Mediation Funds Appropriates $65,000 to Women-in-Action for the Prevention of Violence and its Causes, Inc., to provide mediation services in Durham County.	$65,000	R	$65,000	R
Total Legislative Changes	**($662,858)** **$1,824,000**	R NR	**$482,964**	R
Total Position Changes	4.00		9.00	
Revised Budget	**$342,604,760**		**$345,726,582**	

Judicial - Indigent Defense

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$96,688,190**		**$91,688,190**	
Legislative Changes				
Aid to Non-State Entities				
11 Reduce Grant-in-Aid to State Bar Reduces the funding passed through to the State Bar to support the Center for Death Penalty Litigation by 15%	($88,500)	R	($88,500)	R
Attorney Fee Fund				
12 Reduce Indigent Persons Attorney Fee Fund Takes a recurring reduction to the Indigent Persons Attorney Fee Fund's continuation growth, which was just over $13 million.	($1,381,432)	R	($1,770,991)	R
Sentencing Services				
13 Reduce and Restructure Sentencing Services Program Reduces current appropriation to the Sentencing Services program from $3.68 million to $2.5 million. In order to achieve this reduction, the Office of Indigent Defense Services shall close low-performing programs in certain districts within the state. Districts with State-run programs may be eliminated if their utilization indicates lack of local support and interest, and associated positions may be cut by the agency. The agency will consult with the Senior Resident Superior Court Judge in each district prior to eliminating the local program	($1,180,285)	R	($1,180,285)	R
Total Legislative Changes	**($2,650,217)**	R	**($3,039,776)**	R
Total Position Changes				
Revised Budget	**$94,037,973**		**$88,648,414**	

Justice

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$78,155,004**		**$78,855,004**	
Legislative Changes				
Criminal Justice Training & Standards				
14 Budget Over-realized Receipts Reduce the budget to offset increased receipts, based on revenue collections in FY 2003-04.	($50,000)	R	($50,000)	R
15 Reduce Over-budgeted Worker's Compensation The budget for worker's compensation is reduced due to a decrease in projected need.	($46,587)	R	($46,587)	R
Department-wide				
16 Reduce Travel Line Items Reduce travel line items to actual 2003-04 expenditures.	($58,589)	R	($58,589)	R
17 Eliminate vacant positions Eliminate five vacant positions in the Department: 3613-0000-0004-210 (Comp. Supp. Tech I) 3613-0000-0002-029 (Comp. Supp. Tech I) 3613-0000-0003-999 (Proc. Asst. V) 3613-0000-0004-231 (Proc. Asst. V) 3612-0000-0000-867 (Volunteer Services Coordinator)	($198,940) -5.00	R	($198,940) -5.00	R
18 Reduce Contractual Line Item Line item 532140, Information Technology contracts, is reduced.	($39,571)	R	($50,000)	R
19 NC D.A.R.E. Provide one-time funds to be passed through to The North Carolina D.A.R.E (Drug Abuse Resistance Education) Officers Association, Inc. to be used in the program's efforts to teach the students of North Carolina the skills to help them make sound decisions about alcohol, tobacco, marijuana, and other drugs and to provide in-service training to enhance the effectiveness of law enforcement officers in the classroom	$25,000	NR		
Law Enforcement - SBI				
20 Reduce Vehicle Replacement Increase One-year elimination of the recurring increase for vehicle replacement recommended in the Governor's continuation budget. This leaves a budget of approximately $1.1 million in 2005-06 and $1.4 million in 2006-07.	($261,104)	NR		

	FY 05-06		FY 06-07	
21 Reduce SBI Increase for Equipment Reduce the increase for equipment recommended in the Governor's continuation budget by 50 percent. The Department may use federal asset forfeiture funds to purchase additional equipment.	($115,368)	R	($115,368)	R
22 Budget Increased Receipts From DCI-PIN Fee Budget anticipated receipts from an increase in the monthly fee for access to the Division of Criminal Information - Police Information Network (DCI-PIN) from $6 to $12 for mobile data terminals, effective January 1, 2006.	($325,548)	R	($651,096)	R
23 Reduce Over-budgeted Longevity The longevity budget is reduced due to a decrease in projected longevity payments.	($136,828)	R	($136,828)	R
24 Expand Methamphetamine Response Team Provides six sworn forensic drug chemists and two non-sworn drug technicians, and related expenditures, to respond to clandestine methamphetamine labs and perform drug analyses. Positions are effective June 1, 2006 due to the projected completion date of the new SBI lab wing.	$30,485 $49,016 8.00	R NR	$365,820 $33,240 8.00	R NR
25 Expand Computer Crimes Section Two Computer Crimes Agents/Criminal Specialists and two Forensic Computer Analysts are added to the SBI. Computer Crimes Agents will partner with the FBI National Internet Crimes Against Children Task Force and will work primarily on child exploitation and sexual predator cases. Positions are effective January 1, 2006.	$107,560 $10,868 4.00	R NR	$197,394 4.00	R
26 Expand Utilization of DNA Evidence Provides funding to expand the SBI Crime Lab's ability to effectively process DNA evidence. Funding for 7 non-sworn positions - 6 Geneticists and 1 Evidence Technician - and related travel, equipment and supplies. Budgets anticipated federal grant funds of $658,117 in FY 2005-06 and $62,611 in FY 2006-07. Two Geneticists and the Evidence Technician are effective January 1, 2006. The remaining positions are effective June 1, 2006 due to space constraints and the projected completion date of the new SBI lab wing.	$102,169 7.00	R	$478,221 7.00	R
Legal Services				
27 Establish Receipt-Supported Position The Department may establish one receipt-supported Attorney IV position to provide legal assistance to the Retirement Systems Division of the NC Treasurer's Office. Salary for the position is $89,220; salary and benefits total $104,665. Salary, benefits, and related expenditures will be funded by the Treasurer's Office as provided in the cooperative agreement between the two agencies.				

Conference Report on the Continuation, Capital, and Expansion Budget	FY 05-06		FY 06-07	
28 Animal Shelter Regulations - Legal Services	$75,000	R	$75,000	R
One new Attorney II position is established to provide services to the Department of Agriculture in its actions or proceedings associated with the Animal Welfare Act. Funds are provided for salary, benefits, travel, and other related expenditures.	1.00		1.00	
Total Legislative Changes	**($656,217)**	R	**($190,973)**	R
	($176,220)	NR	**$33,240**	NR
Total Position Changes	15.00		15.00	
Revised Budget	**$77,322,567**		**$78,697,271**	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$139,857,825**		**$140,157,825**	
Legislative Changes				
Department-wide				
29 Reduce Non-salary Line Items Reduce the budget for data processing supplies and pc/printer equipment replacement	($158,614)	R	($158,614)	R
30 Reduce Travel Budget Reduce the continuation budget increase for employee travel.	($63,882)	R	($63,882)	R
31 Budget Prior Year Receipts Increase the amount budgeted for prior year receipts to approximate the actual amount realized in recent fiscal years.	($300,000)	NR		
Detention Centers				
32 Budget Over-Realized Detention Receipts DJJDP states that receipts for the local share of detention costs will not decline at the rate anticipated. DJJDP states that receipts will be $1 million more than projected in the 2005-07 continuation budget. This allows for a reduction of $500,000 in the General Fund appropriation.	($500,000)	R	($500,000)	R
Intervention/Prevention				
33 Juvenile Crime Prevention Councils Funds are provided to expand Alternatives to Commitment Demonstration Projects. These funds shall be awarded on a competitive basis to county JCPCs to provide alternative, community-based diversion and dispositional programs for juveniles who would otherwise be committed to youth development centers.	$250,000	R	$250,000	R
34 Juvenile Crime Prevention Councils Reduce the continuation budget for JCPC formula grants by 2.5 percent.	($593,663)	R	($593,663)	R
35 JCPC Funds for Gang Prevention $2,000,000 NR is provided to be awarded on a competitive basis to JCPCs for gang prevention programs throughout the state.	$2,000,000	NR		

	FY 05-06		FY 06-07	
36 Gang Prevention Funds for Law Enforcement Agencies Funds are provided for gang violence and other crime prevention activities in the following law enforcement agencies: Cumberland Co. Sheriff's Dept. - $3,500 Fayetteville Police Dept. - $11,000 Durham Police Dept. - $40,000 Charlotte Mecklenburg Police Dept. - $50,000	$104,500	NR		
Special Initiatives				
37 NC Communities In Schools Reduce pass-through funding in the DJJDP continuation budget for the NC Communities in Schools (NCCIS) administrative office. The goal of NCCIS is to improve student school performance and it functions primarily to support the mission of the Department of Public Instruction. NCCIS will continue to receive continuation funding of $169,000 R from DJJDP, $200,000 R from the Governor's Office, and $607,500 R from DPI. In addition, the Education Appropriations Subcommittee's budget provides $500,000 (NR) in expansion funding, as requested in the Governor's Recommended Budget. In total, NCCIS will receive $1,476,500 in state funds in FY05-06.	($103,500)	R	($103,500)	R
38 Project P.R.I.D.E. Eliminate continuation budget funding for this program. Program should seek state funding available through the county JCPCs or federal grants from the Governor's Crime Commission.	($140,000)	R	($140,000)	R
39 Eckerd Wilderness Camps Funds are transferred from the Department of Public Instruction to DJJDP to offset the educational costs of Eckerd services provided to juveniles admitted from all referral sources.	$1,600,000	R	$1,600,000	R
40 Project Challenge Funding for Project Challenge is increased to restore a NR reduction in FY 2002 which was erroneously retained in the continuation budget for 2003-05 and 2005-07.	$30,000	R	$30,000	R
Youth Development Centers				
41 Reduce Funding for YDC Beds The funding for Youth Development Centers is over $44 million dollars. This funding level is based on operating over 600 beds. Average daily population in 2004 was 485. DJJDP currently has 539 beds open. This action reduces funding by approximately 4%. In implementing this reduction, DJJDP shall not close any YDC's and shall implement the reduction throughout the YDC system, including positions and YDC non-salary line items.	($1,855,000) -46.00	R	($1,855,000) -46.00	R

Conference Report on the Continuation, Capital, and Expansion Budget	FY 05-06		FY 06-07	
42 Expand Treatment Staffing Model Provides funds for training, and reclassification of staff once training is completed, in order to expand treatment positions in the YDCs.	$250,000	R	$250,000	R
Total Legislative Changes	**($1,284,659)** **$1,804,500**	R NR	**($1,284,659)**	R
Total Position Changes	-46.00		-46.00	
Revised Budget	**$140,377,666**		**$138,873,166**	

Correction

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$1,045,627,365**		**$1,060,627,365**	
Legislative Changes				
Alcohol and Chemical Dependency				
43 DART Substance Abuse Treatment Funding is provided to expand in-prison residential treatment capacity by up to 34 beds. Priority should be given to programs 90 days or longer. Positions are Substance Abuse Program Supervisor, Substance Abuse Counselor II, Substance Abuse Counselor I, and Substance Abuse Worker.	$165,000 4.00	R	$165,000 4.00	R
Central Administration				
44 Travel Eliminate continuation increase in travel for DOC central administration.	($264,022)	R	($264,022)	R
45 Safety Positions Establish three safety related positions: a Safety Officer II (Industrial Hygienist); a Safety Officer I; and, an Occupational Health Nurse. Positions are effective November 1, 2005.	$104,725 $15,458 3.00	R NR	$157,398 3.00	R
46 IT Security Equipment One-time funding to improve the information technology infrastructure by funding security software and security-related computer equipment.	$105,000	NR		
47 Medical Audit and Analysis Positions Funding for one Reimbursement Officer (Field Auditor) and one Accountant II position. The two positions will be assigned to the DOC Controller's Office to do field audits of medical services and billing and to develop reports matching bills with contract rates and services. These two positions will be effective October 1, 2005.	$75,478 $8,567 2.00	R NR	$102,581 2.00	R
Community Corrections				
48 Reduce Miscellaneous Contract Line Item Reduce line item. This will leave funds in excess of 2003-04 actual expenditures, to be used for risk assessments and other needs.	($90,000)	R	($90,000)	R
49 Reduce Office Equipment Reduce the budget for office equipment to more closely reflect actual 2003-04 expenditures.	($45,000)	R	($45,000)	R

	FY 05-06		FY 06-07	
50 Reduce Probation/Parole Officer I Positions Eliminate 25 vacant Probation/Parole Officer I positions. Caseloads for these positions have been increased from 90:1 to 110:1, leaving 59 positions that are not necessary to meet caseload goals. DCC may reallocate the remaining 34 positions for trainers, supervising officers, and other positions as needed.	($1,117,400) -25.00	R	($1,117,400) -25.00	R
51 Reduce Increase for CJPP Eliminate the $1 million increase in the Governor's recommended continuation budget. No more than 25 percent of each county's funds may be used for pre-trial release services in FY 2005-06, and no funds may be used for pre-trial release services in FY 2006-07.	($1,000,000)	R	($1,000,000)	R
52 Summit House, Inc. Provide one-time expansion funds to be passed through to Summit House, Inc., a non-profit organization that serves women probationers and their children.	$60,000	NR		
Department Wide				
53 Computer Equipment Reduce personal computer/printer line item budget to more closely reflect 2003-04 expenditures.	($821,920)	R	($821,920)	R
54 Reduce Overtime Budget Eliminate the recommended continuation budget increase in overtime pay.	($1,244,184)	R	($1,244,184)	R
Post-Release Supervision & Parole Commission				
55 Eliminate Vacant Positions Eliminate two vacant case analyst positions.	($94,642) -2.00	R	($94,642) -2.00	R
56 Restructure Parole Commission Reduce two of the three Commissioner positions from full-time to half-time positions. The Chair will remain a full-time position.	($102,662) -1.00	R	($102,662) -1.00	R
57 Special Issues Case Analyst Position A new case analyst position is established to focus on the medical aspects of release plans and expedite releases involving extradition. Initially, this position will also be devoted in part to implementing Sections 17.27 and 17.28 of this Act.	$37,873 1.00	R	$37,873 1.00	R
Prisons				
58 Carpentry/Hardware Supplies Reduce this line item by 10%	($500,000)	R	($500,000)	R

	FY 05-06		FY 06-07	
59 Increase Inmate Medical Co-pay Increase inmate co-pay for sick call from $3 to $5 and for sick call outside normal hours from $5 to $7.	($149,000)	R	($149,000)	R
60 Inmate Work Release Charges The amount inmates pay towards the administration of the work release program is $16 a day in per diem and $2.50 a day for transportation. This increases per diem to $18 and transportation to $3	($536,000)	R	($536,000)	R
61 Inmate Medical -- Physician Charges This reduction assumes that DOC will reduce the cost of external physician services for DOC inmates by renegotiating reimbursement rates, continuing efforts to regionalize medical services, increasing efforts to audit bills, and taking other cost containment actions. Also assumes savings will result from eight new positions established to help control medical costs. A portion of these reductions may be achieved using DOC available funds under conditions detailed in this Act.	($1,850,000)	R	($1,850,000)	R
62 Inmate Medical -- Hospital Charges This reduction assumes that DOC will reduce the cost of inpatient and outpatient hospital services for DOC inmates by renegotiating reimbursement rates, continuing efforts to regionalize medical services, increasing efforts to audit hospital bills, and taking other cost containment actions. Also assumes savings will result from eight new positions established to help control medical costs. A portion of these reductions may be achieved using DOC available funds under conditions detailed in this Act.	($2,750,000)	R	($2,750,000)	R
63 Delay Maury Correctional Center Positions Maury Correctional center is due to open November 05; the inmate occupancy date is April 06. Positions are established on a rolling schedule from August 05 to November 05; this action pushes back the establishment of each position one month but is not intended to delay the opening of the prison.	($1,061,088)	NR		
64 Delay Maury Regional Medical Positions DOC included funding for a regional medical program at Maury Correctional Center in its continuation budget. Based on the length of time for startup of a similar facility at Alexander Correctional Center, it is believed position establishment can be delayed until June of 05-06	($1,415,623)	NR		
65 Delay Bertie Positions Construction of Bertie Correctional center is due to be completed in February, 2006; the inmate occupancy date is July 2006. Positions are established on a rolling schedule from September 05 to February 06. This action pushes back the establishment of each position one month but is not intended to delay the opening of the prison.	($1,155,007)	NR		

	FY 05-06		FY 06-07	
66 Reduce line items in Maury and Bertie budgets Reduce non-security line items by 10% at each prison (equipment, supplies etc)	($207,455)	R	($207,455)	R
67 Maury and Bertie Salary Reserve Reduce salary reserve line item in new prisons. $100,000 remains in line item. DOC can use department-wide salary reserve for position reallocation needs at Maury and Bertie.	($631,120)	R	($631,120)	R
68 Holiday Pay Reduce the continuation budget for holiday pay from 1.75 times regular pay to 1.5, the same holiday pay rate that other eligible state employees receive. DOC may use available funds to offset this reduction.	($1,340,000)	R	($1,340,000)	R
69 Reduce Unit Management Function in Prisons DOC uses unit management positions at eighteen prisons to assist security and program staff with the day to day operation of housing units. This action eliminates five vacant positions.	($176,473) -5.00	R	($176,473) -5.00	R
70 Inmate Medical Positions Establish six medical records clerks (Prison Health Services). The records clerks will assist in data entry and review of medical claims. These positions are effective November 1, 2005.	$114,546 $20,400 6.00	R NR	$161,076 6.00	R
71 Domestic Violence Offender Treatment The 2004 General Assembly mandated the establishment of an intervention program for domestic violence offenders sentenced to prison. These funds establish programs in two prisons, with two case managers per prison, and funds for training, equipment and related expenses. Positions are established October 1, 2005.	$111,565 $30,040 4.00	R NR	$161,087 4.00	R
Total Legislative Changes	**($12,310,691)** **($3,392,253)**	R NR	**($12,134,863)**	R
Total Position Changes	-13.00		-13.00	
Revised Budget	**$1,029,924,421**		**$1,048,492,502**	

Crime Control and Public Safety

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$29,861,632**		**$29,961,632**	
Legislative Changes				
Administration				
72 State/Local Redevelopment Liaison Eliminate the State/Local Redevelopment Liaison Position (4910-2000-0001-212). The function of this position duplicates that of the staff in the Division of Community Assistance (DCA) at the Department of Commerce. DCA assists local governments across the state with community development, housing, economic development, and revitalization. In addition, the Institute of Government at UNC-CH provides community and economic development assistance to county and local governments.	($90,294) -1.00	R	($90,294) -1.00	R
Alcohol Law Enforcement				
73 Leased Space Reduce the continuation budget for leases to correct an erroneous increase.	($120,000)	R	($120,000)	R
Department-wide				
74 Increase Budgeted Receipts Increase the amount budgeted for receipts to approximate actual amounts realized in recent years.	($290,000)	NR		
75 Reduce Non-salary Line Items Reduce the continuation amount budgeted for contracts, supplies, equipment, and other non-salary expenses in Alcohol Law Enforcement, Butner Public Safety, and Administration.	($176,066)	R	($176,066)	R
National Guard				
76 National Guard Pension Fund Provide $4,500,000 for the NC National Guard Pension Fund. Effective July 1, 2005, these funds will be used to increase the monthly pension benefit payment to current and future retirees from a maximum of $100 to a maximum of $150.	$4,500,000	R	$4,500,000	R
77 Staffing for New Fort Bragg Facility Funding is provided for 2 new positions, effective October 1, 2005, for the new $21 million NC National Guard training facility: 1) Facility Maintenance Manager (PG66) 2) Maintenance Mechanic (PG62)	$58,662	R	$78,216	R

	FY 05-06		FY 06-07	
78 Tuition Assistance Program Funds are provided to increase the continuation budget for the National Guard Tuition Assistance Program to $2,014,288. This will allow the program to address the anticipated increase in requests for tuition assistance as deployed NC National Guard members begin returning from Afghanistan and Iraq.	$200,000	R	$200,000	R
79 Armory Asbestos & Lead Abatement Funds are provided for asbestos and lead abatement at the National Guard Armory in Warsaw, NC.	$50,000	NR		
State Highway Patrol				
80 VIPER Funding is provided from the Highway Fund for the Voice Interoperable Communications Plan for Emergency Responders (VIPER) system as follows: 1 position: Network Control Tech I, $51,087 R Equipment Purchases: $8,000,000 NR	$0	R	$0	R
81 Additional Trooper Positions Highway Funds are provided to add ten (10) new trooper positions: FY2005-06 FY2006-07 $550,000 R $550,000 R $450,000 NR	$0	R	$0	R
82 MCE Receipt-supported Position Establish one position, using federal receipts, in the Motor Carrier Enforcement Section (MCE) to conduct motor carrier safety audits. The total annual salary and benefit costs for this position shall not exceed $54,003. Administrative Officer I (PG67)	$0	R	$0	R
83 Motor Carrier Position Transition Governor's Recommendation: Highway Funds are provided to train and transition all filled Motor Carrier Enforcment Officer positions so that they have the same level of arrest authority and pay as other troopers. FY 2005-06 FY2006-06 $2,488,986 R $2,488,986 R $ 482,829 NR	$0	R	$0	R
84 Sharing of Weigh-In-Motion Data Highway Funds are provided to enable the Highway Patrol to access data collected by DOT at all existing weigh-in-motion sites. $40,500 NR	$0	R	$0	R

	FY 05-06		FY 06-07	
85 Civilian Weight & Vehicle Safety Inspection Teams Highway Funds are provided for four (4) Grade 58 Data Collector II positions to staff a pilot program to increase the effectiveness of Motor Carrier Enforcement Officers operating remotely from permanent weigh station facilities. FY 2005-06 FY2006-07 $147,448 R $147,448 $ 58,442 NR	$0	R	$0	R
Victim and Justice Services				
86 Crime Victims Compensation $800,000 R is provided to pay crime victims' compensation claims. This amount will increase the general fund continuation budget for victims compensation payments from $3,700,000 to $4,500,000. The expansion will increase federal VOCA receipts, which provide a 60% match to state victims compensation payments, by $480,000.	$800,000	R	$800,000	R
Total Legislative Changes	**$5,172,302** **($240,000)**	R NR	**$5,191,856**	R
Total Position Changes	-1.00		-1.00	
Revised Budget	**$34,793,934**		**$35,153,488**	

GENERAL GOVERNMENT
Section J

Administration

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$60,053,752**		**$61,483,537**	

Legislative Changes

1123 Historically Underutilized Businesses

1 Construction Database Mgm't System Enhancement

	$74,915	R	$74,915	R
	$250,000	NR		
	1.00		1.00	

Provides funding to enhance the existing HUBSCO Construction Reporting System to meet the current State Technical Architecture standards and to establish one Application Analyst Programmer position. The Department developed the system to capture HUB expenditures and construction data for the HUB Office and the State Construction Office.

Recurring	FY 2005-06	FY2006-07
531211 Salaries	$63,000	$63,000
531511 Social Security	$4,820	$4,820
531521 Retirement	$3,663	$3,663
531561 Med Ins	$3,432	$3,432
Total Recurring	$74,915	$74,915
Nonrecurring		
532140 IT-HUBSCO Upgrades	$250,000	

1230 Non-Public Education

2 Non-Public Education Personnel

	$79,661	R	$79,661	R
	$1,900	NR		
	2.00		2.00	

Provides funding to establish an Education Program Specialist position ($30,354) and an Office Assistant IV position ($23,316). Also provides additional funding for operating cost. The additional positions and operating cost will allow the Division to expand non-public school visitation, respond to citizen complaints about specific home schools, provide more careful review of annual standardized test results, and to contract out annual mailings to the home schools.

Recurring	FY2005-06	FY2006-07
531211 Salaries	$53,670	$53,670
531511 Social Security	$4,106	$4,106
531521 Retirement	$3,121	$3,121
531561 Med Ins	$6,864	$6,864
532199 Annual Mailings	$4,100	$4,100
532714 Expanded Home Visitations	$4,350	$4,350
532840 Postage	$3,000	$3,000
532811 Telephones	$450	$450
Total Recurring	$79,661	$79,661
Nonrecurring		
534522 PCs	$1,900	

1241 Management Information Systems

3 Information Technology Security Personnel — FY 05-06: $81,334 R; 1.00 — FY 06-07: $81,334 R; 1.00

Provides funding to establish an IT Security Associate Analyst position ($54,811) to address the department's IT security issues that have been identified in the IT Security Assessment conducted by the Office of Information Technology Services.

Recurring	FY2005-06	FY2006-07
531211 Salaries	$54,811	$54,811
531511 Social Security	$4,193	$4,193
531521 Retirement	$3,187	$3,187
531561 Med Ins	$3,432	$3,432
534710 Computer Software	$500	$500
534522 Equipment-Computers	$3,000	$3,000
532811 Telephone Service	$600	$600
532942 Oth Emp Ed Expenses	$3,000	$3,000
532930 Registration Fees	$250	$250
532725 Meals - Out of State	$150	$150
532722 Lodging - Out of State	$625	$625
532440 Maint Agree-DP Equip	$2,565	$2,565
532441 Maint Agree - Software	$5,021	$5,021
Total Recurring	$81,334	$81,334

1311 Office of State Personnel

4 Operating Budget Increases — FY 05-06: $71,600 NR

Appropriates funds to purchase equipment and software for the OSP Training Center, and to continue training for mediation services.

	FY 05-06	FY 06-07
532942 Oth Svs/Training	$ 21,600	$ 0
534521 Office Equipment	$ 25,000	$ 0
534711 Computer Software	$ 25,000	$ 0

	FY 05-06		FY 06-07	
1511 Purchase and Contract				
5 E-Procurement Compliance Personnel	$135,846	R	$135,846	R
Provides funding to establish 2 compliance officer positions ($51,334 each) to provide E-procurement educational outreach, manage the E-procurement contract, and perform compliance reviews. The E-procurement contract requires a review of all direct payments for all NCAS agencies on a quarterly basis.	$3,800	NR	$0	NR
	2.00		2.00	

Recurring	FY2005-06	FY2006-07
531211 Salaries	$102,668	$102,668
531511 Social Security	$7,854	$7,854
531521 Retirement	$5,970	$5,970
531561 Med Ins	$6,864	$6,864
532714 Trans-ground	$2,200	$2,200
532727 Trans-other	$25	$25
532721 Lodging-In State	$1,800	$1,800
532724 Meals-In State	$1,000	$1,000
532811 Telephone Service	$950	$950
532814 Cellular Phones	$1,700	$1,700
532930 Registration Fees	$3,500	$3,500
533110 Gen Office Supplies	$1,315	$1,315
Total Recurring	$135,846	$135,846
Nonrecurring		
534511 Furniture Office	$1,200	
534539 Other Equipment	$2,600	
Total Nonrecurring	$3,800	

1731 NC Council for Women/DV Commission				
6 Domestic Violence Commission Staff	$35,245	R	$35,245	R
Provides funding for the salary and benefits for an additional staff position to oversee the Abuser Treatment Program within the NC Council for Women and Domestic Violence Commission.	1.00		1.00	
7 Albemarle Hopeline, Inc.				
Provides a grant-in-aid to Albemarle Hopeline, Inc., a private, non-profit organization dedicated to serving victims of family violence, sexual assault, and teen dating violence. The grant will assist with the purchase and retrofitting of a facility that will provide direct services to victims of sexual and domestic violence in six northeastern NC counties.	$150,000	NR		
8 Coastal Horizons Center, Inc.				
Provides a grant to Coastal Horizons Center, Inc. in Wilmington, NC for the continued operation of the Center's Rape Crisis Center.	$25,000	NR		
9 Domestic Violence Shelter and Services, Inc.				
Provides a grant for the continued operation of Domestic Violence Shelter and Services, Inc. in Wilmington, NC.	$25,000	NR		

	FY 05-06		FY 06-07	
10 Family Services of Davidson County, Inc.				
Provides a grant-in-aid to Family Services of Davidson County, Inc., a nonprofit organization, for treatment and counseling services for domestic violence victims.	$25,000	NR		
11 Safe Space, Inc.				
Provides a grant-in-aid to Safe Space, Inc., a nonprofit organization, to support domestic violence and community-based public health programs in Franklin County.	$25,000	NR		
12 Women's Center of Fayetteville				
Provides a grant-in-aid to Women's Center of Fayetteville, a nonprofit organization, to provide programs and services that assist entrepreneurs by developing and enhancing their business skills and encouraging the exchange of information.	$50,000	NR		
1741 Human Relations Commission				
13 City of Durham				
Provides a grant for the operating support for the city's Human Relations Commission.	$15,000	NR		
1771 Veterans Affairs Division				
14 Scholarships Partially Funded From Escheats	($1,491,106)	R	($2,679,379)	R
Transfers funding for 76.4% of the scholarships from appropriation-support to receipt-support. The receipts will come from the Escheats Funds. This funding shift continues the funding shift that was made in the 2003 Appropriations Act., S.L. 2003-284. The funding shift does not impact the total amount available for the scholarship program. The total available for scholarships is $5,625,058 for fiscal year 2005-06 and $5,704,249 for fiscal year 2006-07.				
15 NC Veterans Park Funds				
Provides a grant-in-aid to the City of Fayetteville to establish the NC Veterans Park. The General Assembly made plans for the park in the 1990s that were never implemented.	$2,300,000	NR		
16 Edgecombe County Veterans Military Museum				
Provides a grant-in-aid to the Edgecombe County Veterans' Military Museum, a nonprofit organization, for operating expenses and for the development of a museum honoring Edgecombe County veterans (HB 1337).	$10,000	NR		
17 NC Veterans Memorial Committee, Inc.				
Provides a grant-in-aid for the construction and maintenance of the North Carolina Veterans Memorial in Broadway, NC.	$150,000	NR		

	FY 05-06		FY 06-07	
1811 GACPD				
18 Personnel Reduction	($67,686)	R	($67,686)	R
Eliminates salary and fringe benefits equivalent to that of the Assistant Director position (4140-1540-0000-480). The Division Director's position has been vacant since November 2001. The Division also has an Administrative Secretary III position that has been vacant since January 2004. These vacancies have been allowed to remain pending the Governor's decision regarding redesignation of the Council to a non-profit status. The responsibilities of the Director have been performed by the Assistant Director. With the elimination of the salary and fringe benefits in the amount of $67,686, the Department may select which of the Council's 7.28 General Fund positions it will eliminate.	-1.00		-1.00	
1861 Commission of Indian Affairs				
19 Indian Cultural Center				
Provides funding for preparation and construction of picnic shelters and visitors' restrooms and to upgrade public ceremonial grounds at the North Carolina Indian Cultural Center.	$30,000	NR		
20 Lumbee River Council of Governments				
Provides a grant-in-aid to the Lumbee River Council of Governments to support youth opportunity projects throughout Robeson County.	$5,000	NR		
21 NC Indian Economic Development Initiative				
Provides a grant to the North Carolina Indian Economic Development Initiative, a nonprofit corporation that was created as an outgrowth of the NC Commission on Indian Affairs Year 2004 Strategic Planning effort. The purpose of the grant is to continue the work of the North Carolina Indian Economic Development Initiative, aimed at spurring economic development and creating jobs in rural Indian communities.	$325,000	NR		
1881 Transition Team				
22 Operating Budget Reduction	($120,000)	R	($120,000)	R
Eliminates transition funds for the Council of State members. This funding will not be needed during the 2005-07 biennium				
1882 Governor's Inauguration				
23 Operating Budget Reduction	($205,000)	R	($205,000)	R
Eliminates funding for the Governor's Inauguration. Funding will not be needed during the 2005-07 biennium				

	FY 05-06		FY 06-07	
Total Legislative Changes	**($1,476,791)**	R	**($2,665,064)**	R
	$3,462,300	NR	**$0**	NR
Total Position Changes	6.00		6.00	
Revised Budget	**$62,039,261**		**$58,818,473**	

Cultural Resources

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$61,114,752**		**$59,597,482**	

Legislative Changes

1110 Office of the Secretary

24 Boards and Commissions and North Carolina Awards $50,000 R $50,000 R

Provides funding that supports travel and work of the Director of Boards and Commissions, who serves as the departmental liaison with 39 nonprofit support groups and foundations for state historic sites and museums. Additionally, restores state funding for the North Carolina Awards Program, which has been receipt-supported for several years.

	FY 05-06	FY 06-07
532199 Misc Contractual Svs	$ 10,000	$ 10,000
532714 Grd Trans/In-state	$ 9,000	$ 9,000
532721 Lodging/In-state	$ 8,000	$ 8,000
532724 Meals/In-state	$ 6,000	$ 6,000
532727 Misc/In-state	$ 2,000	$ 2,000
532850 Printing	$ 10,000	$ 10,000
533900 Oth Materials/Supplies	$ 5,000	$ 5,000

25 Operating Budget Reduction ($180,000) R ($180,000) R

Eliminates funding for historical, art and cultural grants.

1120 Administrative Services

26 Information Technology Services Expansion $50,000 R $50,000 R

Appropriates funding to establish one (1) Applications Programmer I position and to purchase additional computer equipment. $2,500 NR
1.00 1.00

	FY 05-06	FY 06-07
531112 Salaries	$ 41,000	$ 41,000
531511 Social Security	$ 3,137	$ 3,137
531521 Retirement	$ 2,384	$ 2,384
531561 Med Ins	$ 3,432	$ 3,432
532199 Misc Contractual Svs	$ 47	$ 47
534522 Equip - Computers	$ 2,500	

1230 Archives & Records

27 Edenton Signers Memorial Funds

Provides funding to establish a Signers Memorial on the grounds of the Chowan County Courthouse to honor Hugh Williamson, a signer of the United States Constitution. $300,000 NR

	FY 05-06		FY 06-07	
28 The Murfreesboro Historical Association, Inc.				
Provides a grant-in-aid in FY 2005-06 for operational and program support ($50,000). Additionally, provides funding for renovations and the installation of an elevator at the Jeffcoat Museum in Murfreesboro and other improvements at the historic site ($92,000).	$142,000	NR		
1241 State Historic Sites				
29 Increase Operating Budget	$500,000	R	$500,000	R
Provides additional funds for maintenance of historic sites statewide.				
30 Roanoke River Lighthouse Restoration Funds				
Provides funds for the Edenton Historical Commission to acquire, relocate, and restore the lighthouse.	$300,000	NR		
31 Historic Bandon Building Restoration Funds				
Appropriates funding to acquire, move, and restore the 1827 kitchen building of the former Bandon Plantation for location to the State Historic Site in Edenton.	$250,000	NR		
32 Historic Oak Grove School Funds				
Provides a grant-in-aid for FY 2005-06 to Washington Town Community Assn., Inc. to retire the debt for renovations of the school.	$50,000	NR		
33 Historic Salisbury Foundation, Inc.				
Provides a grant-in-aid in FY 2005-06 for renovating Hall House.	$25,000	NR		
34 Historic Burwell School Repair Funds				
Provides a grant-in-aid in FY 2005-06 to the Historic Hillsborough Commission for repairs to the school. (HB 1656)	$5,000	NR		
35 Historic Hillsborough District Commission Funds				
Provides a grant-in-aid in FY 2005-06 to assist the Commission catalog, promote, and preserve the historic site. (HB 1658)	$5,000	NR		
36 Town of Hope Mills				
Provides a grant-in-aid in FY 2005-06 for the historic preservation of the town.	$14,000	NR		
37 New Bern's 300th Anniversary Funds				
Provides a grant-in-aid in FY 2005-06 to the Swiss Bear Downtown Development Corporation to aid the City of New Bern in preparing for its Tercentenary Anniversary. (HB 1588)	$50,000	NR		
38 CSS Neuse Restoration Committee, Inc.				
Provides funds for the relocation and preservation of the Civil War CSS Neuse gunboat. (SB 1084)	$30,000	NR		

	FY 05-06		FY 06-07	
1242 Tryon Palace Historic Sites				
39 Increase Operating Budget	$570,432	R	$570,432	R
Appropriates funding to replace budgeted admission receipts that will be deposited into a nonreverting fund to support capital improvements at the historic site.				
1243 State Capitol/Visitor Services				
40 New Personnel	$94,000	R	$94,000	R
Appropriates funds for two (2) Museum Specialist positions at pay grade 66 and salary of $35,695. The total recurring expenditure is $94,000, which includes $85,597 for salaries and benefits and $8,403 for operating expenses, and non-recurring expense of $3,000 for office and computer equipment.	$3,000 2.00	NR	 2.00	
1250 Historic Preservation				
41 The Historic Preservation Foundation of NC, Inc.				
Provides a grant-in-aid in FY 2005-06 to The Historic Preservation Foundation of NC, Inc to repair and paint two (2) historic tanks at Glencoe, and to repair a historic dam on the Haw River and to control erosion along mill race at Glencoe Mill. (HB 1403)	$50,000	NR		
1260 Office of State Archaeology				
42 Queen Anne's Revenge Recovery Funds				
Provides a grant-in-aid in FY 2005-06 to support the QAR Shipwreck Recovery Project.	$50,000	NR		
1320 Museum of Art				
43 Program Diversity and New Security Personnel	$283,797	R	$250,000	R
Provides funding to extend programming to schools and communities using computers, the Internet, and other means in order to broaden the museum's reach statewide. Also, provides funds to establish five (5) new Museum Guard positions.	5.00		5.00	

	FY 05-06	FY 06-07
531112 Salaries	$104,030	$104,030
531511 Social Security	$ 7,958	$ 7,958
531521 Retirement	$ 6,049	$ 6,049
531561 Med Ins	$ 17,160	$ 17,160
532714 Grd Trans/In-state	$ 4,500	$ 4,500
532721 Lodging/In-state	$ 2,300	$ 2,300
532724 Meals/In-state	$ 1,800	$ 1,800
532727 Misc/In-state	$ 1,100	$ 1,100
533900 Oth Materials/Supplies	$ 3,000	$ 3,000
534539 Oth Equipment	$ 15,000	$ 15,000
534610 Art and Artifacts	$120,899	$ 87,102

44 Asheville Art Museum Association, Incorporated				
Provides a grant-in-aid in FY 2005-06 for planning an expansion to the Museum's current facilities. (HB 235)	$25,000	NR		

	FY 05-06		FY 06-07	
1330 NC Arts Council				
45 Grassroots Arts Program	$580,000	R	$580,000	R
Increases funding in expenditure account 536996 for grants to local arts councils. This increase provides $1.7 million for grants to local arts councils that are awarded through the formal application process. Additionally, provides $1 million on a nonrecurring basis in FY 05-06 to also be awarded through the formal application process.	$1,000,000	NR		
46 Basic Grants Program	$396,133	R	$396,133	R
Increases funding in expenditure account 536990 for grants to individuals and organizations in the categories of arts in education, visual arts, folklife, folk heritage, general and program support, organizational development, outreach, and touring/presenting. This increase provides $2.9 million and restores funding to the FY 2000-01 level for grants that are awarded through a formal application process.				
47 Carolina Ballet				
Provides a grant-in-aid for FY 2005-06.	$250,000	NR		
48 'Strike at the Wind' Drama				
Provides non-recurring funding for the upgrade, replacement, and modification of electronic equipment.	$20,000	NR		
49 Southern Appalachian Historical Association, Inc				
Provides a grant-in-aid in FY 2005-06 for operational support of the outdoor drama, Horn in the West.	$20,000	NR		
50 Pocosin Arts, Inc.				
Provides a grant-in-aid in FY 2005-06 for the development and construction of the Pocosin Arts Education Center.	$1,000,000	NR		
51 Matthews Playhouse of Performing Arts, Inc.				
Provides a grant-in-aid in FY 2005-06 for operational support for youth to learn backstage skills.	$50,000	NR		
52 The Opera Company of NC, Inc.				
Provides a grant-in-aid in FY 2005-06 for educational outreach and operating expenses. (HB 1719)	$50,000	NR		
53 United Arts Council of Greensboro, Inc.				
Provides a grant-in-aid in FY 2005-06 for cultural facility enhancements including restoration of the Carolina Theater ($10,000). (HB 1165)	$25,000	NR		
54 Alamance County Arts Council, Inc.				
Provides a grant-in-aid in FY 2005-06 for the Joe Thompson Project. Funding will complete a traveling exhibition for documentary and presentations of the life of a legendary African-American clawhammer guitar/banjo player from Orange and Alamance Counties.	$1,000	NR		

55 Richmond County Arts Council, Inc.

Provides a grant-in-aid for FY 2005-06 to support an Arts/Agricultural partnership between the arts/crafts people and local farmers in the Sandhills region ($30,000). Additionally, provides funds for the complete renovation of the old McNair Building in downtown Rockingham ($25,000). — $55,000 NR

56 Chatham County Arts Council, Inc.

Provides a grant-in-aid in FY 2005-06 for the use of arts as a tool for economic development. — $50,000 NR

57 Surry Arts Council

Provides a grant-in-aid in FY 2005-06 for operational and program support of the Andy Griffith Theatre. — $10,000 NR

58 African-American Atelier, Inc.

Provides a grant-in-aid in FY 2005-06 to African-American Atelier, Inc for operating expenses in providing its arts programs and exhibits. (HB 1205) — $12,000 NR

59 Guilford NAA Cultural Funds

Provides a grant-in-aid in FY 2005-06 to the Guilford Native American Association, Inc. to support cultural programming for Native American and other youth. (HB 1423) — $10,000 NR

60 African-American Cultural Center Funds

Provides a grant-in-aid in FY 2005-06 to the African-American Cultural Center for repairs to the facility in Robeson County. (HB 1738) — $5,000 NR

61 Folkmoot USA

Provides a grant-in-aid in FY 2005-06 for rehabilitation of a former middle school as the FOLKMOOT Center. Additionally, provides funds for general programming to support "Folkmoot USA", North Carolina's official international festival (HB 1627) — $110,000 NR

62 Madison County Arts Council

Provides a grant-in-aid to renovate facility to serve as Madison's Art Center. — $10,000 NR

63 Martin County Arts Council, Inc.

Provides a grant-in-aid to renovate and restore historical building in downtown district. — $5,000 NR

64 The Farmville Community Arts Council, Inc.

Provides a grant-in-aid in FY 2005-06 to support programs for area schools and the community. — $5,000 NR

65 Triad Stage, Inc.

Provides a grant-in-aid in FY 2005-06 to Triad Stage, Inc. for operational expenses and to support a regional scene shop open to nonprofit arts organizations in the Triad. (HB 1666) — $125,000 NR

	FY 05-06		FY 06-07	
66 Turnage Theaters Foundation, Inc.				
Provides a grant-in-aid in FY 2005-06 to the Turnage Theaters Foundation, Inc., to assist in renovating the Theater to enhance economic development in Beaufort County.	$500,000	NR		
67 Anson County Arts Council, Inc.				
Provides a grant-in-aid in FY 2005-06 for restoration of the historic Ansonia Theater in Wadesboro, NC.	$25,000	NR		
68 Caldwell Arts Council. Inc.				
Provides a grant-in-aid in FY 2005-06 to the Caldwell Arts Council in Lenoir County.	$20,000	NR		
69 Penland School of Crafts				
Provides a grant-in-aid in FY 2005-06 to the Penland School of Crafts to provide assistance with crafts programming for western North Carolina.	$100,000	NR		
70 Jewish Heritage Foundation of North Carolina				
Provides funding to assist the Jewish Heritage Foundation of NC in the production of its heritage project, "Down Home: Jewish Life in North Carolina". (SB 451)	$50,000	NR		
1340 NC Symphony				
71 Grant-In-Aid				
Provides grant-in-aid to the NC Symphony for FY 2005-06.	$500,000	NR		
72 Greensboro Symphony Society, Incorporated				
Provides a grant-in-aid in FY 2005-06 to support the orchestra's Second Annual Gospel Concert and education programs. (HB 1648)	$50,000	NR		
1410 State Library Services				
73 Services to the Blind and Physically Handicapped	$16,100	R	$9,100	R
Appropriates funds to install and maintain a new telephone system and a card access security system for the building and the computer server room	$27,300	NR		

	FY 05-06	FY 06-07
532199 Misc Contractual Svs	$ 8,000	$ 1,000
532811 Telephone Service	$ 7,000	$ 7,000
532812 Telecomm Data Charges	$ 1,100	$ 1,100
534539 Other Equipment	$ 27,300	

1480 State Library Statewide Programs				
74 Aid to Counties	$1,000,000	R	$1,000,000	R
Provides additional funds to support grants to public libraries based upon the formula for State-Aid to Libraries. The additional funding provides $15.8 million for aid to local libraries.				

75 Mecklenburg County Library

Provides a grant-in-aid to Mecklenburg County Library in FY 2005-06 to provide computer stations for expansion of ImaginOn children's education programs and activities. $1,000,000 NR

76 Cumberland County Public Library

Provides a grant-in-aid in FY 2005-06 to Friends of Cumberland County Public Library & Information Center, Inc to support a 'Visiting Authors' series for the Cumberland County community. This program creates awareness of the opportunities offered by the libraries of Cumberland County and focuses efforts to enrich the cultural advantages available to Cumberland County citizens. $1,500 NR

77 Bethel Public Library

Provides a grant-in-aid in FY 2005-06 to renovate and update the library facility. $5,000 NR

78 Robersonville Public Library

Provides a grant-in-aid in FY 2005-06 to upgrade old computers and purchase new books. $5,000 NR

79 Hoke County Public Library

Provides a grant-in-aid in FY 2005-06 toward the purchase of a bookmobile, and to renovate and update the library facility. $25,000 NR

80 Rose Hill Community Memorial Library

Provides a grant-in-aid in FY 2005-06 for the operation, programming, and expansion of the library. $10,000 NR

1500 Museum of History

81 Sit-In Movement, Inc. (I C R C & M)

Provides a grant in FY 2005-06 for final renovation costs of the Museum $500,000 NR

82 Vance County Visitor Center Museum

Provides a grant-in-aid in FY 2005-06 for operational support. $100,000 NR

83 Sparta Teapot Museum

Provides a grant-in-aid in FY 2005-06 for design and planning the future home of the Kamm Historic Teapot Collection. $400,000 NR

84 Museum of the New South, Inc.

Provides funding as a grant-in-aid in FY 2005-06 for operating programs. $50,000 NR

85 Graveyard of the Atlantic Museum

Provides a grant-in-aid for FY 2005-06 for operational support and capital expenses. $100,000 NR

	FY 05-06		FY 06-07
86 Charlotte Museum of History, In.			
Provides funding as a grant-in-aid in FY 2005-06 for an exhibit and to enhance the school curriculum in history of the region and State.	$50,000	NR	
87 Sampson County History Museum, Inc.			
Provides a grant-in-aid for FY 2005-06 for operational support.	$5,000	NR	
88 Rowan Museum, Inc			
Provides a grant-in-aid in FY 2005-06 for a 1,700 square foot addition that will house an elevator to make the 2nd and 3rd floors handicapped accessible.	$25,000	NR	
89 Rutherford County Farm Museum			
Provides a grant-in-aid in FY 2005-06 for a 10,000 square foot display. This item is also supported by donations.	$10,000	NR	
90 Raeford-Hoke Museum, Inc			
Provides a grant-in-aid in FY 2005-06 for repairs and maintenance. (HB 1733)	$30,000	NR	
91 Tobacco Farm Life Museum, Inc.			
Provides a grant-in-aid in FY 2005-06 to assist the museum in preserving and celebrating farm life in NC. (HB 1140)	$25,000	NR	
92 Person County Museum of History, Inc.			
Provides a grant-in-aid in FY 2005-06 for maintenance of the facility. (HB 1611)	$20,000	NR	
93 Scotland County			
Provides a grant-in-aid in FY 2005-06 to assist with the renovation of a vacant building that is owned by Scotland County for the purpose of converting it to a county museum	$20,000	NR	
94 Discovery Place, Inc.			
Provides a grant-in-aid in FY 2005-06 for "The Dead Sea Scrolls" traveling exhibition.	$40,000	NR	
95 Badin History Museum, Inc.			
Provides a grant-in-aid in FY 2005-06 for the continued operation and maintenance of the Badin Historic Museum (HB 1669)	$25,000	NR	
96 National Mary Potter Club, Inc.			
Provides a grant-in-aid in FY 2005-06 for the George C. Shaw Museum in Granville County.	$25,000	NR	
97 Museum of the Cape Fear			
Provides a grant-in-aid in FY 2005-06 to the Museum of the Cape Fear Historical Complex Foundation, Inc. for planning the expansion and enhancement of the Museum of the Cape Fear.	$1,000,000	NR	

Conference Report on the Continuation, Capital, and Expansion Budget	FY 05-06		FY 06-07	
98 Exploris				
Provides a grant-in-aid in FY 2005-06 to obtain new exhibits and sustain current operations at the Exploris Museum in Raleigh, NC	$100,000	NR		
Total Legislative Changes	**$3,360,462**	R	**$3,319,665**	R
	$8,958,300	NR		
Total Position Changes	8.00		8.00	
Revised Budget	**$73,433,514**		**$62,917,147**	

General Assembly

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	$43,864,588		$46,965,432	
Legislative Changes				
1900 Reserves and Transfers				
99 Operating Reserves				
Reduces operating reserve funds.	($930,000)	NR		
Total Legislative Changes	($930,000)	NR		
Total Position Changes				
Revised Budget	$42,934,588		$46,965,432	

Housing Finance Agency

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$4,750,945**		**$4,750,945**	
Legislative Changes				
8102 HTF State Appropriations				
100 Additional Funding for Housing Finance				
Provides additional funding for programs administered by the Housing Finance Agency.	$5,000,000	NR		
8104 NC Housing Foreclosure				
101 Continue/Expand the Home Protection Pilot Program				
Appropriates funding to continue and expand the Home Protection Pilot Program in all counties that had greater than seven percent (7%) average unemployment in FY 2004-05. The pilot was established in Section 20A.1 of S.L. 2004-124.	$700,000	NR		
Total Legislative Changes	**$5,700,000**	NR		
Total Position Changes				
Revised Budget	**$10,450,945**		**$4,750,945**	

Insurance

	GENERAL FUND	
	FY 05-06	FY 06-07
Adjusted Continuation Budget	**$27,831,701**	**$27,866,769**

Legislative Changes

1200 Company Services Group

102 Information Technology Personnel

	$153,852	R	$153,852	R
	$7,200	NR	$0	NR
	2.00		2.00	

Provides funding to establish an Applications Analyst Programmer II position ($58,803) and a Computer Systems Analyst IV position ($64,429) in the Information Services Division. One position will be used to continue the ongoing upgrade from multiple legacy systems to the new integrated Operations Tracking and Information System (OTIS). Duties include programming and the new ongoing maintenance once the OTIS system is completed. The other position will be responsible for security issues at the Department, including implementing the ISO 17799 standard for information technology security.

Recurring	FY2005-06	FY2006-07
531211 Salaries	$123,232	$123,232
531511 Social Security	$9,427	$9,427
531521 Retirement	$7,166	$7,166
531561 Med Ins	$6,864	$6,864
5327XX Transportation	$2,213	$2,213
5328XX Communication	$1,200	$1,200
5329XX Other Services	$2,500	$2,500
533110 Gen Office Supplies	$1,250	$1,250
Total Recurring	$153,852	$153,852

Nonrecurring	
534511 Furniture Office	$7,000
5358XX Other Admin. Exp.	$200

The Insurance Regulatory Fund will reimburse the General Fund for the appropriation.

	FY 05-06		FY 06-07	
103 PEO Personnel and Operating Cost	$89,961	R	$89,961	R
Provides funding to establish an Insurance Company Examiner III position ($60,000) to administer and enforce the NC Professional Employer Organization Act (G.S. 58-89A). The primary emphasis of the position will be on the licensing and financial solvency of the PEOs.	$5,500	NR		
	1.00		1.00	

Recurring	FY2005-06	FY2006-07
531211 Salaries	$60,000	$60,000
531511 Social Security	$4,590	$4,590
531521 Retirement	$3,489	$3,489
531561 Med Ins	$3,432	$3,432
5327XX Transportation	$11,600	$11,600
5328XX Communication	$1,350	$1,350
5329XX Other Services	$500	$500
533110 General Office Supplies	$2,500	$2,500
533120 Data Processing Supplies	$2,500	$2,500
Total Recurring	$89,961	$89,961
Nonrecurring		
534511 Furniture Office	$3,000	
534543 PC/Printer Equipment	$2,500	
Total Nonrecurring	$5,500	

Fees collected with PEO applications and annual filings will be deposited into the Insurance Regulatory Fund and will be used to reimburse the General Fund for the appropriation.

1500 Office of State Fire Marshall

104 Cornelius Volunteer Fire Department

Provides a grant-in-aid for operating support. $25,000 NR

1500 Office of the State Fire Marshal

105 Hyde County

Provides funding for the purchase of a beach access vehicle for emergency services for Ocracoke Island. $25,000 NR

106 Maxton Rescue Squad, Inc.

Provides a grant-in-aid for operating support. $5,000 NR

107 Orange Fire Training Facility Funds

Provides a grant-in-aid to the Orange County Chiefs Association, a nonprofit organization, for capital improvements to a regional fire training facility in Orange County. (HB 1655). $5,000 NR

108 Warrenton Rural Voluntary Fire Association, Inc.

Provides a grant-in-aid to the Warren Rural Voluntary Fire Association, Inc., a nonprofit organization, for operating expenses. (HB 1692). $7,500 NR

Conference Report on the Continuation, Capital, and Expansion Budget	FY 05-06		FY 06-07	
109 Ansonville Volunteer Fire Department				
Provides a grant-in-aid for operating support.	$25,000	NR		
110 Rowland Rescue Squad, Inc.				
Provides a grant-in-aid to the Rowland Rescue Squad, Inc., a nonprofit organization, for roof repairs. (HB 1740).	$5,000	NR		
111 Warren County Rescue Squad, Inc.				
Provides a grant-in-aid to the Warren County Rescue Squad, Inc., a nonprofit organization, for operating expenses. (HB 1693).	$5,000	NR		
112 Scotland County				
Provides a grant-in-aid to Scotland County to be used by the Wagram Volunteer Fire Department for equipment purchases and for repairs to its facility. (HB 1743).	$5,000	NR		
113 Union Volunteer Fire Department				
Provides a grant-in-aid for operating support.	$25,000	NR		
Total Legislative Changes	**$243,813**	R	**$243,813**	R
	$145,200	NR	**$0**	NR
Total Position Changes	3.00		3.00	
Revised Budget	**$28,220,714**		**$28,110,582**	

Insurance - Workers' Compensation for Volunteer Firemen

GENERAL FUND

	FY 05-06		FY 06-07
Adjusted Continuation Budget	**$4,500,000**		**$4,500,000**
Legislative Changes			
1900 Reserves and Transfers			
114 Volunteer Safety Workers' Compensation Fund			
Reduces the General Fund appropriation to the Volunteer Safety Workers' Compensation Fund on a non-recurring basis. This reduction will not affect the operations of the Fund. The balance in the Fund as of February 28, 2005 was $21.98 million. The average of the Fund's balances for the past 4 years is $21.47 million.	($2,500,000)	NR	
Total Legislative Changes	**($2,500,000)**	NR	
Total Position Changes			
Revised Budget	**$2,000,000**		**$4,500,000**

Lieutenant Governor

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$690,697**		**$690,697**	
Legislative Changes				
1110 Administration				
115 Increase Office Assistant Position to Full Time	$8,404	R	$8,404	R
Increases an Office Assistant position (Pos # 3100-000-0016-035) from 30 to 40 hours per week.	0.25		0.25	
116 Increase Operating Budget	$2,400	R	$2,400	R
Provides funding to increase the operating budget in the following line items:				
532811 Telephone service	FY 05-06 $600		FY 06-07 $600	
532814 Cellular phone service	$1,200		$1,200	
532850 Printing, Binding, Dup	$600		$600	
117 Additional Personnel	$51,536	R	$51,536	R
Provides funding to establish a second Policy Development Analyst to serve as an Assistant to the Lieutenant Governor for Policy and Research.	$1,700 1.00	NR	1.00	
531111 Salaries	FY 05-06 $42,307		FY 06-07 $42,307	
531511 Social Security	$3,237		$3,237	
531521 Retirement	$2,460		$2,460	
531561 Med Ins	$3,432		$3,432	
533110 Gen Office Sup	$100		$100	
534534 PC/Printer Equipment	$1,200			
534713 PC Software	$500			
Total Legislative Changes	**$62,340** **$1,700**	R NR	**$62,340**	R
Total Position Changes	1.25		1.25	
Revised Budget	**$754,737**		**$753,037**	

Office of Administrative Hearings

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$2,976,210**		**$2,967,712**	
Legislative Changes				
1100 Administration and Operations				
118 Software Upgrade Provides funding for a software upgrade that allows the North Carolina Register to be published on the Internet. Recurring funds are provided for the software's on-going maintenance support and hosting service, and nonrecurring funds are provided to purchase the upgrade.	$2,000 $9,200	R NR	$2,000	R
Total Legislative Changes	**$2,000** **$9,200**	R NR	**$2,000**	R
Total Position Changes				
Revised Budget	**$2,987,410**		**$2,969,712**	

Revenue

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$82,817,444**		**$82,960,444**	

Legislative Changes

1602 Security

119 Additional Personnel — $79,134 R; $80,000 R

Provides funds to establish one (1) Systems Security Analyst position. This position will address issues raised in the 2004 Statewide Security Assessment conducted by the Office of Information Technology Services. — $500,000 NR; 1.00; 1.00

	FY 05-06	FY 06-07
531211 Salaries	$ 64,429	$ 64,429
531511 Social Security	$ 4,929	$ 4,929
531521 Retirement	$ 3,747	$ 3,747
531561 Med Ins	$ 3,432	$ 3,432
532140 Oth IT	$ 350,000	$ 2,565
532714 Trans Grd In State	$ 2,597	$ 898
534713 PC Software Purchases	$ 75,000	
534714 Server Software Purchases	$ 75,000	

1605 Information Technology

120 Increase IT Operating Funds — $134,107 R; $134,107 R

Appropriates funding to support salaries, benefits, and computer equipment for three (3) additional positions: Computing Consultant III ($38,773), Applications Analyst Programmer I ($42,307), and Senior Computer Operator ($28,038). — $28,871 NR; 3.00; 3.00

	FY 05-06	FY 06-07
531211 Salaries	$ 109,118	$ 109,118
531511 Social Security	$ 8,348	$ 8,348
531521 Retirement	$ 6,345	$ 6,345
531561 Med Ins	$ 10,296	$ 10,296
534534 PC & Printer Purchases	$ 24,000	
534713 PC Software	$ 4,871	

1607 Tax Research

121 Personnel Adjustments — ($59,375) R; ($59,375) R

Eliminates salary and related benefits of two positions that have been vacant for more than six months: Office Assistant III, #4774-0000-0040-010 ($29,561); and Statistical Assistant V, #4774-0000-0040-315 ($29,814). — -2.00; -2.00

	FY 05-06		FY 06-07	
1629 Property Tax				
122 New Personnel	$136,916	R	$136,916	R
Appropriates funds to establish two (2) Property Tax Valuation Specialist positions. The cost associated with the positions will be reimbursed on a monthly basis through the allowance for administrative cost available per G.S. 105-501 in the year subsequent to the year the cost is incurred. Property tax expenses are reimbursed by the local sales tax at 100%	$12,000	NR		
	2.00		2.00	

	FY 05-06	FY 06-07
531211 Salaries	$ 102,668	$ 102,668
531511 Social Security	$ 7,854	$ 7,854
531521 Retirement	$ 5,970	$ 5,970
531561 Med Ins	$ 6,864	$ 6,864
532448 Maint Agreement-Software	$ 460	$ 460
532714 Trans Grd In State	$ 9,000	$ 9,000
532721 Lodging In State	$ 1,200	$ 1,200
532724 Meals In State	$ 1,200	$ 1,200
532811 Telephone Service	$ 700	$ 700
533110 Gen Office Supplies	$ 1,000	$ 1,000
534511 Furniture - Office	$ 9,000	
534534 PC & Printer Purchases	$ 1,800	
534713 PC Software Purchases	$ 1,200	

1660 Examination and Collection				
123 Operating Budget Reduction	($3,664,145)	R	($3,664,145)	R
Adjusts budget with a recurring reduction that is the result of transferring General Fund operations to receipt-support in FY 04-05 using funds from the 20% Collection Assistance Fee in Budget Code 24704-2474.				
124 Personnel Transfer	($75,339)	R	($75,339)	R
Transfers salaries and related benefits from General Fund to receipt-support from the 20% Collection Assistance Fee in Budget Code 24704-2472 for two (2) positions: Revenue Administrative Officer I, #4784-0000-0076-593 ($47,426); and Processing Assistant IV, #4784-0000-0076-598 ($27,913).	-2.00		-2.00	

	FY 05-06		FY 06-07	
125 Revenue Enhancement	$2,389,229	R	$2,389,229	R
Appropriates funds to employ forty-five (45) positions to enhance compliance, enforcement, and debt collection services.	$413,805	NR		
	45.00		45.00	

Collection Personnel

4	Information Processing Tech (CCU-Raleigh)	- $100,144
11	Revenue Officer I (Charlotte)	- $377,124
4	Revenue Officer I (Durham)	- $137,136
2	Revenue Officer I (Fayetteville)	- $ 68,568
4	Revenue Officer I (Greensboro)	- $137,136
2	Revenue Officer I (Hickory)	- $ 68,568
7	Revenue Officer I (Raleigh)	- $239,988
2	Revenue Officer II (Charlotte)	- $ 74,288
1	Revenue Officer II (Durham)	- $ 37,144
1	Revenue Officer II (Greensboro)	- $ 37,144
2	Revenue Officer II (Raleigh)	- $ 74,288
1	Revenue Officer II (CCU-Raleigh)	- $ 37,144

	FY 05-06	FY 06-07
531211 SPA Regular Salaries	$1,388,672	$1,388,672
531521 Retirement Cont	$ 80,751	$ 80,751
531511 Soc Security Cont	$ 105,747	$ 105,747
531561 Med Insurance	$ 140,712	$ 140,712
532446 Maint - LAN (switch) Charlotte (1)	$ 300	$ 300
532446 Maint - LAN (switch) Greensboro (2)	$ 600	$ 600
532446 Maint - LAN (switch) Fayetteville (1)	$ 300	$ 300
532447 Maint - PC & Printer (desktop)	$ 1,542	$
532447 Maint - PC & Printer (laptop)	$ 15,708	$
532448 Maint - PC Software (desktop)	$ 500	$ 500
532448 Maint - PC Software (laptop)	$ 3,600	$ 3,600
532448 Maint - PC Software (licenses)	$ 3,600	$ 3,600
532512 Rent/Lease - Office Bldgs (A)	$ 36,720	$ 36,720
532714 Tran/Grd - In - State	$ 74,000	$ 74,000
532814 Cellular Svs (smart phone)	$ 14,350	$ 14,350
532811 Telephone Svs	$ 16,800	$ 16,800
532817 Internet Service Provider	$ 5,904	$ 5,904
532818 Data Wiring Svs Charge	$ 25,000	$
532819 Telephone Wiring Svs Chg	$ 25,000	$
532821 Computer Data Process	$ 344,400	$ 344,400
533110 Gen Office Supplies	$ 20,500	$ 20,500
534521 Office Equip (calculator)	$ 4,100	$
534511 Furniture - Office	$ 184,500	$
534528 Voice Comm Equip (phone)	$ 8,200	$
534528 Voice Comm Equip (smart phone)	$ 5,000	$
534533 LAN Equip (switch) - Charlotte (1)	$ 5,000	$
534533 LAN Equip (switch) - Greensboro (2)	$ 10,000	$
534533 LAN Equip (switch) - Fayetteville (1)	$ 5,000	$
534534 PC & Printer Pur (desktop)	$ 1,545	$

534534 PC & Printer Pur (laptop)	$ 35,280	$
534534 PC & Printer Pur (travel carr)	$ 3,600	$
534534 PC & Printer Pur (monitor)	$ 8,569	$
534713 PC Software Pur (software)	$ 16,400	$
534713 PC Software Pur (license)	$ 24,600	$
Subtotal Recurring	$2,237,456	$2,237,456
Nonrecurring	$ 379,044	

Processing Support Personnel
1 Information Processing Tech - $ 25,036
1 Processing Assistant IV - $ 21,576

	FY 05-06	FY 06-07
531211 SPA Regular Salaries	$ 46,612	$ 46,612
531511 Soc Security Cont	$ 3,550	$ 3,550
531521 Retirement Cont	$ 2,710	$ 2,710
531561 Med Insurance	$ 6,864	$ 6,864
532447 Maint - PC & Printer (laptop)	$ 514	$
532448 Maint - PC Software	$ 200	$ 200
532811 Telephone Svs	$ 700	$ 700
532817 Internet Service Provider	$ 288	$ 288
534511 Furniture - Office	$ 9,000	$
533110 Gen Office Supplies	$ 1,000	$ 1,000
534528 Voice Comm Equip (phone)	$ 400	$
534534 PC & Printer Pur (desktop)	$ 618	$
534534 PC & Printer Pur (monitor)	$ 570	$
534713 PC Software Pur (software)	$ 800	$
534534 PC & Printer Pur (printer)	$ 3,600	$
534521 Office Equip (calculator)	$ 200	$
Subtotal Recurring	$ 61,924	$
61,924		
Nonrecurring	$ 15,702	

Taxpayer Assistance Personnel
2 Revenue Officer I (Durham) - $ 68,568

	FY 05-06	FY 06-07
531211 SPA Regular Salaries	$ 68,568	$ 68,568
531511 Soc Security Cont	$ 5,221	$ 5,221
531521 Retirement Cont	$ 3,987	$ 3,987
531561 Med Insurance	$ 6,864	$ 6,864
532447 Maint - PC & Printer (laptop)	$ 514	$
532446 Maint - LAN Equip (switch)	$ 300	$ 300
532448 Maint - PC Software	$ 200	$ 200
532512 Rent/Lease - Office Bldgs (A)	$ 2,720	$ 2,720
532811 Telephone Svs	$ 700	$ 700
532817 Internet Service Provider	$ 288	$ 288
533110 Gen Office Supplies	$ 1,000	$ 1,000
534511 Furniture - Office	$ 9,000	$
534521 Office Equip (calculator)	$ 200	$
534528 Voice Comm Equip (phone)	$ 400	$
534533 LAN Equip (switch)	$ 5,000	$
534534 PC & Printer Pur (desktop)	$ 618	$
534534 PC & Printer Pur (monitor)	$ 418	$

	FY 05-06	FY 06-07
534713 PC Software Pur	$ 800	$
534534 PC & Printer Pur (printer)	$ 1,800	$
Subtotal Recurring	$ 89,848	$ 89,848
Nonrecurring	$ 18,750	

1662 Taxpayer Call Center

126 Operating Expense Transfer ($2,007,624) R ($2,008,039) R

Transfers 47 positions from General Fund to receipt-support from the 20% Collection Assistance Fee in Budget Code 24704-2472. The positions provide Level I call center support for the Taxpayer Assistance and Collection Center (TACC). -47.00 -47.00

127 Additional Revenue Enhancement Personnel $425,246 R $425,246 R

Appropriates funding for 15 Processing Assistant IV positions to support work of the new compliance, enforcement, and debt collection personnel in the Examination and Collection Division. 15.00 15.00

	FY 05-06	FY 06-07
531211 SPA Regular Salaries	$ 323,640	$ 323,640
531511 Soc Security Cont	$ 24,646	$ 24,646
531521 Retirement Cont	$ 18,820	$ 18,820
531561 Med Insurance	$ 51,480	$ 51,480
532817 Internet Service Provider	$ 2,160	$ 2,160
532523 Rent/Lease-Voice Comm Eq (ITS Lease)	$ 4,500	$ 4,500

1663 Project Compliance

128 Tax Information Initiative $250,000 R $250,000 R

Provides funding to continue the tax information initiative implemented in the 2004 Session that will improve tax compliance rates.

	FY 05-06		FY 06-07	
1670 Unauthorized Substance Tax				
129 Additional Personnel	$61,206	R	$61,206	R
	$6,000	NR		
	1.00		1.00	

Appropriates funds to establish one (1) Unauthorized Substance (USUB) Tax Enforcement Agent I. The cost associated with the position will be reimbursed on a monthly basis through the allowance for administrative cost available per G.S. 105-501 in the year subsequent to the year the cost is incurred. USUB expenses are reimbursed by the local sales tax at 70% with the General Fund supporting the remaining 30% of funding.

	FY 05-06	FY 06-07
531211 Salaries	$ 43,046	$ 43,046
531511 Social Security	$ 3,293	$ 3,293
531521 Retirement	$ 4,655	$ 4,655
531561 Med Ins	$ 3,432	$ 3,432
532448 Maint Agreement-Software	$ 230	$ 230
532714 Trans Grd In State	$ 4,500	$ 4,500
532721 Lodging In State	$ 600	$ 600
532724 Meals In State	$ 600	$ 600
532811 Telephone Service	$ 350	$ 350
533110 Gen Office Supplies	$ 500	$ 500
534511 Furniture - Office	$ 4,500	
534534 PC & Printer Purchases	$ 900	
534713 PC Software Purchases	$ 600	

1710 Fuel Tax Compliance

130 Expansion of Revenue Tax Evasion Project

Provides funding to add nine (9) positions to staff the project that was authorized in the 2004 Session, resulting in a total of nineteen (19) positions. Receipt-support continues for the project with the transfer of funding from the Highway Trust Fund. Total funding for the additional personnel is $548,633 in FY 05-06 and $470,701 in FY 06-07.

Positions

1	Processing Unit Supervisor (Gr. 61)	- $23,251
1	Processing Assistant V (Gr. 61)	- $23,251
1	Information Processing Tech (Gr. 63)	- $30,684
4	Revenue Tax Auditor I (Gr. 73)	- $148,576
1	Revenue Tax Auditor II (Gr. 75)	- $51,334
1	Revenue Admin Officer III (Gr. 78)	- $58,803

	FY 05-06	FY 06-07
531211 Salaries	$ 335,899	$ 335,899
531511 Social Security	$ 25,696	$ 25,696
531521 Retirement	$ 19,533	$ 19,533
531561 Med Ins	$ 30,888	$ 30,888
532448 Maint Agreement-Software	$ 0	$ 1,035
532714 Trans Grd In State	$ 32,000	$ 32,000
532721 Lodging In State	$ 4,000	$ 4,000
532724 Meals In State	$ 4,000	$ 4,000
532811 Telephone Service	$ 3,150	$ 3,150
532821 Comp Data Processing	$ 10,000	$ 10,000
533110 Gen Office Supplies	$ 4,500	$ 4,500
Total Recurring	$ 469,666	$ 470,701

532447 Maint Agree - PC/Printer	$ 2,456
532942 Oth Emp Ed Expenses	$ 12,881
534511 Furniture - Office	$ 40,500
534521 Office Equip (calculator)	$ 900
534534 PC/Printer (laptops & desks)	$ 12,380
534534 PC/Printer Equipment	$ 4,450
534713 PC Software Purchases	$ 5,400
Total Non-Recurring	$ 78,967

Total Legislative Changes	**($2,330,645)**	R	**($2,330,194)**	R
	$960,676	NR		
Total Position Changes	16.00		16.00	
Revised Budget	**$81,447,475**		**$80,630,250**	

Secretary of State

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$8,568,943**		**$8,549,857**	
Legislative Changes				
1210 Corporations Division				
131 Decrease Budgeted Receipts Reduces budgeted receipts for sale of data tapes to reflect actual receipts. The demand for bulk data through the purchase of data tapes has significantly decreased over the past several years. The budgeted requirements for producing the tapes has been reduced but there has been no corresponding decrease in budgeted receipts. The decrease in budgeted receipts to reflect actual receipts requires a corresponding increase in appropriations.	$61,900	R	$61,900	R
1220 Uniform Commercial Code Division				
132 Decrease Budgeted Receipts Reduces budgeted receipts for sale of data tapes to reflect actual receipts. The demand for bulk data through the purchase of data tapes has significantly decreased over the past several years. The budgeted requirements for producing the tapes has been reduced but there has been no corresponding decrease in budgeted receipts. The decrease in budgeted receipts to reflect actual receipts requires a corresponding increase in appropriations.	$64,175	R	$64,175	R
1230 Securities Division				
133 Operating Cost Increase Provides funding for new lease costs for the Department's Securities Division. The Department had to enter into a lease for space for its Securities Division when it was required to vacate the Legislative Office Building.	$89,000	R	$89,000	R

	FY 05-06		FY 06-07	
1XXX Lobbyist Section				
134 Lobbyist Registration Enhancement			$389,375	R
Provides funding for additional staff and operating cost for the Lobbyist Registration Section to meet the additional lobbyist registration requirements that will result if Senate Bill 612, 2005 Regular Session, becomes law. The funding for the 2005-06 fiscal year will support the development of a more enhanced system for the registration of lobbyists and to maintain the expenditure reports. The funding for the 2006-07 fiscal year will support the following positions: one (1) grade level 75 Lobbyist Director ($40,516); five (5) grade level 65 Administrative Assistant II positions ($26,968); and three (3) grade level 61 Processing Assistant IV positions ($23,251).	$150,045	NR	$115,326 9.00	NR

Recurring	FY 2005-06	FY 2006-07
531211 Salaries	$0	$245,109
531511 Social Security	$0	$18,751
531521 Retirement	$0	$14,253
531561 Insurance	$0	$30,888
5327XX Transportation	$0	$6,000
532942 Employee Education	$0	$7,200
532811 Telephone Service	$0	$1,674
533110 Office Supplies	$0	$9,000
532840 Postage	$0	$2,500
532512 Rent/Lease-Building/Offices	$0	$54,000
Total Recurring	$0	$389,375
Nonrecurring		
534711 Computer Software	$150,045	$0
532811 Telephone System	$0	$7,326
534511 Office Furniture	$0	$31,100
534521 Office Equipment	$0	$56,200
534534 Computers/Printers	$0	$20,700
Total Non-recurring	$0	$115,326

Total Legislative Changes	**$215,075**	R	**$604,450**	R
	$150,045	NR	**$115,326**	NR
Total Position Changes			9.00	
Revised Budget	**$8,934,063**		**$9,269,633**	

State Board of Elections

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$4,957,543**		**$4,959,307**	
Legislative Changes				
1100 Administration				
135 Training and Support on Voting Systems				
Provides funding to allow the State Board of Elections to purchase furniture and computer equipment for any additional staff that it may employee, with HAVA Funding, to facilitate the training and support of voting systems utilized by the counties if Senate Bill 223, 2005 Regular Session becomes law. Facilitation of the training and support of the counties' voting systems by the State Board is a requirement of SB 223.	$40,000	NR		
By special provision, the State Board is directed to develop its plan for facilitating the training and support and to report on that plan and any additional funding requirements by April 1, 2006.				
1200 Campaign Reporting				
136 Campaign Reporting IT Support	$110,000	R	$110,000	R
Provides funding to establish one Applications Analyst Programmer I position ($46,306) to assist in supporting and enhancing the Campaign Finance Management System	1.00		1.00	

	FY2005-06	FY2006-07
531211 Salaries	$46,306	$46,306
531511 Social Security	$3,542	$3,542
531521 Retirement	$2,693	$2,693
531561 Med Ins	$3,432	$3,432
532143 LAN Support Services	$54,027	$54,027

Total Legislative Changes	**$110,000**	R	**$110,000**	R
	$40,000	NR		
Total Position Changes	1.00		1.00	
Revised Budget	**$5,107,543**		**$5,069,307**	

State Budget & Management

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$4,904,371**		**$4,908,931**	
Legislative Changes				
1310 Office of State Budget and Management				
137 NEON Maintenance Contract	$7,000	R	$7,000	R
Provides funding to pay for an annual Shadow Web Server maintenance contract. This cost is required for the maintenance of OSBM budget-related, Web-enabled applications located on the State-owned mainframe computer system				
138 Personnel Increases	$105,864	R	$105,864	R
	$2,500	NR	$0	NR
	2.00		2.00	
Provides funding to establish one Standard Level Analyst for the Justice and Public Safety (JPS) Section at a salary of $48,321 and one Standard Level Analyst for the Education and Transportation sections at a salary of $38,772. The JPS Analyst will assist in the budget preparation, administration, and oversight for the Administrative Office of the Courts and for the Departments of Crime Control and Public Safety, Justice, Correction, Indigent Defense, and Juvenile Justice. The time and effort for the second position will be devoted to the Education Section (50%) and to the Transportation Section (50%) to assist in the budget preparation, administration, and oversight for the University System, the Department of Public Instruction, the North Carolina Community College System and for the Department of Transportation, the Highway Fund, and the Highway Trust Fund.				
Recurring	FY2005-06	FY2006-07		
531211 SPA Regular Salaries	$87,093	$87,093		
531511 Social Security	$6,663	$6,663		
531521 Retirement	$5,064	$5,064		
531561 Medical Insurance	$6,864	$6,864		
Total Recurring	$105,684	$105,684		
Nonrecurring				
534511 Furniture - Office	$700			
534534 PC & Printer Purchases	$1,800			
Total Legislative Changes	**$112,864**	R	**$112,864**	R
	$2,500	NR	**$0**	NR
Total Position Changes	2.00		2.00	
Revised Budget	**$5,019,735**		**$5,021,795**	

State Budget & Management - Special Appropriations

	GENERAL FUND	
	FY 05-06	FY 06-07
Adjusted Continuation Budget	**$3,180,000**	**$3,180,000**

Legislative Changes

139 Pitt County Council on Aging
Provides funds to the Pitt County Council on Aging for construction of a multipurpose facility serving the aging population. $50,000 NR

1022 2005 Special Appropriations

140 71st Township Civic Improvement
Provides a grant-in-aid to Cumberland County to be allocated to the 71st Township Civic Improvement Association for civic, cultural, and senior citizen activities. (HB 1677). $10,000 NR

141 Town of Bolton
Provides a grant-in-aid to the town to renovate the old fire department for use as a Town Hall. (HB 1647). $40,000 NR

142 Montgomery County
Provides a grant-in-aid for the Old County Home Cemetery Fund. $20,000 NR

143 Martin Luther King, Jr. Park
Provides capital funds to the Fayetteville/Cumberland County Dr. Martin L. King, Jr. Committee as a grant-in-aid for a museum at the Martin Luther King Park. $30,000 NR

144 Hollywood Heights Community Club, Inc.
Provides a grant-in-aid to the Hollywood Heights Community Club, Inc., a nonprofit organization, for community association improvements. (HB 1677). $15,000 NR

145 Caswell Soccer Complex Funds
Provides a grant-in-aid to Caswell County Recreation Commission, Inc., a nonprofit organization, for capital improvements to the soccer complex for youth athletic activities in Caswell County. (HB 1676). $5,000 NR

146 Scotland County
Provides funds to Scotland County for the Parks and Recreation Department. $5,000 NR

147 Town of Beulaville
Provides funding to the town for the renovation and conversion of the old Beulaville Elementary School and the subsequent relocation of the Beulaville Town Hall. $75,000 NR

148 Town of Oak City
For repairs and renovations of facility to house senior center activities and community meetings. $10,000 NR

149 Madison County
Provides funds for a new arena and fairgrounds for the Madison Agricultural Complex and Fairgrounds. $10,000 NR

150 Rockingham County
Provides funding for a two-ring 400 stall Equestrian Center. $1,000,000 NR

151 Town of Gibson
Provides a grant-in-aid to the town to assist with the renovation of the old town train depot station. The building will be used for the Tower Hall, community building, adult classrooms, etc. $5,000 NR

152 Robeson County
Provides capital funds to the Pembroke Prospect Drainage District. $50,000 NR

153 Town of Louisburg
Provides a grant-in-aid to the town to complete the final leg of the Bunn Road to Depot Hill bicycle path in Louisburg. $50,000 NR

154 Durham County
Provides operating and programming support for sentencing services. $50,000 NR

155 Haliwa-Saponi Tribe, Incorporated
Provides funds to build a community center to benefit the citizens of Warren County. $100,000 NR

156 The Lynnwood Foundation
Provides funds to support the building of collaborative leadership. $100,000 NR

157 Town of Parkton
Provides a grant-in-aid to the town to assist with the renovation of the Town Hall. The scope of the work includes new restrooms, carpentry repairs, painting, landscaping, etc. $5,000 NR

158 Town of St. Pauls
Provides a grant-in-aid to the town to assist with the renovation of the R.E. Hooks Community Building that is owned by the town. The scope of the work includes landscaping, a new kitchen, restrooms, floor covering, and repairs to the plumbing, electrical, heating, and air conditioning systems. $40,000 NR

159 Town of Whitaker
Provides a grant-in-aid to the town for updates to its code enforcement book and ordinance book. $10,000 NR

160 Town of Enfield
Provides a grant-in-aid to the Town for its community center and to update its code enforcement book and ordinance book. $40,000 NR

161 Wilmington Road Improvement Group
Provides funds for community revitalization. $10,000 NR

162 Yancey County
Build a construction trades facility for the Construction Trades Job Training Collaborative Project, which involves Mountain Heritage High School and Habitat for Humanity.. $15,000 NR

163 Charlotte-Mecklenburg Urban League, Inc.
Provides funding to study health disparities, minority economic development, and the presentation of the African-American Leadership Summit. $100,000 NR

164 Mountain Projects, Inc.
Provides funding to refurnish Canton Senior Center destroyed by flood. $20,000 NR

165 City of Washington
Provides funds for Beebe Park, a park for family, community, and civic events. $100,000 NR

166 Phi Omega, Incorporated
Provides renovation funds for housing for the elderly. $10,000 NR

167 Winston-Salem NAACP
Provides funds for a computer lab and learning center $30,000 NR

168 Northampton County Education Foundation, Inc.
Provides funds for operating expense. $5,000 NR

169 Oxford Community Project, Inc.
Provides funds for operations and for educational programs. $50,000 NR

170 Jackson County
Provides capital funding for a new senior center. $25,000 NR

171 Town of Burgaw
Provides capital funds for train depot. $20,000 NR

172 The Health Adventure, Inc.
Provides funds for expansion planning. $25,000 NR

173 Town of Yanceyville

Provides funding for capital improvements in the Maud Gatewood Park. $5,000 NR

174 Bladenboro Historical Association

Provides capital funding as a grant-in-aid in FY 2005-06 for the Bladenboro Historical Building. $50,000 NR

175 Cumberland Community Foundation, Inc.

Provides funding for Eastover Civic Center renovation and community involvement activities. $7,000 NR

176 ACC Hall of Champions

Provides a grant-in-aid to the City of Greensboro for the establishment of an Atlantic Coast Conference Hall of Champions. $2,000,000 NR

177 Southern Documentary Fund

Provides a grant-in-aid to The Southern Documentary Fund, a nonprofit organization, to promote documentary and educational media. $25,000 NR

178 African American Museum of Sports

Provides a grant-in-aid to the Legacy Basketball Classic Foundation, a nonprofit organization, to plan and develop the National African American Museum of Sports, a unique tourism attraction that would aid in the development of West Charlotte. $100,000 NR

179 NC Humanities Council

Provides funding for the operations of the Teachers' Institute which is operated by the NC Humanities Council. (HB 1232). $50,000 NR

180 East Stokes Community Center, Inc.

Provides a grant-in-aid to the community center for repairs. $5,000 NR

181 Central Intercollegiate Athletic Association

Provides a grant-in-aid for tourism and marketing. $500,000 NR

182 Kids Voting NC Funds

Provides funding to Kids Voting of North Carolina, Inc, a nonprofit corporation. Of the $250,000 appropriated, $50,000 shall be used to implement new Kids Voting programs in non-participating counties across the State. The remaining $200,000 shall be divided on the basis of the North Carolina Department of Public Instruction's Average Daily Membership with a minimum of $2,500 for the following counties: Buncombe, Cabarrus, Catawba, Clay, Cumberland, Durham, Greene, Guilford, Haywood, Henderson, Iredell, Jackson, Madison, Mecklenburg, New Hanover, Onslow, Randolph, and Wake to assist those counties with their Kids Voting programs (SB 690 and HB 895). $250,000 NR

	FY 05-06		FY 06-07	
1023 Fire Protection Grant Fund				
183 Fire Protection Grants-in-Aid Increases funding for the Fire Protection Grants-in-Aid program. New State-owned buildings have been constructed statewide, and this increase will provide additional grants-in-aid to local fire fighting districts that provide fire protection and other services for these new facilities.	$800,000	R	$800,000	R
1900 Reserves and Transfers				
184 Reserve for Rent Expenses Provides funding to establish a reserve for rent for State agencies with office space in the Polk Building in Charlotte. The Polk Building has been sold and the agencies in that building are required to relocate. Also provides nonrecurring funding to cover the relocation expenses of the agencies moving from the Polk Building as well as for the relocation expenses of State agencies that will be affected by the anticipated sale of the Blount Street properties in Raleigh.	$1,131,429 $1,125,000	R NR	$1,131,429	R
Total Legislative Changes	**$1,931,429** **$6,247,000**	R NR	**$1,931,429**	R
Total Position Changes				
Revised Budget	**$11,358,429**		**$5,111,429**	

State Controller

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$9,960,527**		**$9,966,970**	
Legislative Changes				
1000 Administration				
185 Additional Personnel	$77,541	R	$77,541	R
Appropriates funding for the addition of an Internal Control position to conduct on-site compliance reviews, prepare reports based on the findings, and perform follow-up on State property incident reports when warranted.	$5,200	NR		
	1.00		1.00	

	FY 05-06	FY 06-07
531112 Salaries	$ 58,803	$ 58,803
531511 Social Security	$ 4,498	$ 4,498
531521 Retirement	$ 3,419	$ 3,419
531561 Med Ins	$ 3,432	$ 3,432
532447 Maint Agree-PC & Printer	$ 300	$ 300
532448 Maint Agree-PC software	$ 300	$ 300
532714 Trans Grd In State	$ 1,725	$ 1,725
532721 Lodging In State	$ 2,977	$ 2,977
532724 Meals In State	$ 1,586	$ 1,586
533110 Gen Office Supplies	$ 500	$ 500
534534 PC & Printer Purchases	$ 5,200	

Total Legislative Changes	**$77,541**	R	**$77,541**	R
	$5,200	NR		
Total Position Changes	1.00		1.00	
Revised Budget	**$10,043,268**		**$10,044,511**	

Treasurer

	GENERAL FUND	
	FY 05-06	FY 06-07
Adjusted Continuation Budget	**$8,222,117**	**$8,228,365**

Legislative Changes

1310 Local Government Operations

186 Information Technology Enhancements

Provides funding to perform feasibility studies along with the development of the requirements of a new document imaging system and a new debt management system. The funds will be used to hire consultants to: 1) document current business processes and workflows, 2) prepare business and technical requirements for the new systems, 3) prepare a request for proposals, 4) research and provide a list of potential vendors, 5) develop a high level project plan, 6) develop a high level risk analysis, and 7) develop an estimated budget for the implementation of these 2 systems. Of the total provided, $150,000 is for the document imaging system and $250,000 is for the debt management system.	$400,000	NR

1410 Retirement Systems Division

187 Operating Budget to Support Administration of 401K

Authorizes the use of receipts for the salaries and benefits of one Administrative Officer III position as well as for operating cost to support the position. The position will be responsible for overseeing the 401(k) Supplemental Retirement Plan, its investments, and its third party administrator. The operating funds will also be used to provide an independent review of the investment performance of the program each year as well as actuarial and legal fees.

The receipts will also fund a proportionate share of existing costs that are attributable to the 401(k) Plan. Specifically, the Department shall shift 5% of the salary and benefits of the Retirement Systems Divisions Director ($5,878) and its Communication Manager ($2,726) from Retirement System receipts to 401(k) Plan receipts.

Recurring	FY 2005-06	FY 2006-07
531212 Salaries	$52,202	$52,202
531512 Social Security	$3,994	$3,994
531522 Retirement	$3,036	$3,036
531562 Medical Insurance	$3,776	$3,776
532120 Financial/Audit Services	$86,292	$86,292
532714 Transportation	$3,500	$3,500
532724 Meals	$1,500	$1,500
535830 Other Admin. Exp.	$3,700	$3,700
Total Recurring	$158,000	$158,000
Non-recurring		
534500 Equipment	$2,000	

Receipts to support the operating budget will come from amounts collected by the third-party administrator for the 401(k) Plan.

188 Training Staff for Retirement System Employees

Authorizes use of $128,341 in Retirement System receipts to provide training for Retirement System Division employees. The receipts shall be used to establish a Staff Development Director position ($51,683) and a Staff Developer position ($47,297) as well as to fund the reclassification of an existing Counselor position to a Staff Developer position ($8,081).

Recurring	FY 2005-06	FY 2006-07
531212 Salaries	$107,061	$107,061
531512 Social Security	$8,190	$8,190
531522 Retirement	$6,226	$6,226
531562 Medical Insurance	$6,864	$6,864
Total	$128,341	$128,341

189 Information Technology Project/ 2005-07 Biennium

Authorizes the use of receipts on a nonrecurring basis from the Retirement Fund for the final two phases of the Retirement Systems Division's Information Technology project (ORBITS).

ORBITS Project	FY2005-06	FY2006-07
5321XX	$6,528,742	$4,209,349
5324XX	$1,086,838	$739,216
5325XX	$129,600	$129,600
5345XX	$596,300	$396,300
5347XX	$35,350	$35,350
Total	$8,376,830	$5,509,815

Also authorizes the use of receipts on a recurring basis to establish two Applications Analyst Programmer II positions ($58,803 each) to help develop the new system and maintain the system once the project is completed.

Salaries/Fringes	FY2005-06	FY2006-07
531212 Salaries	$117,606	$117,606
531512 Social Security	$8,997	$8,997
531522 Retirement	$6,839	$6,839
531562 Med Ins	$6,864	$6,864
Total Recurring	$140,306	$140,306

No General Funds are required to fund this project.

1510 Financial Operations Division

190 Personnel Increase — $67,478 R / $1,000 NR / 1.00 — $67,478 R / 1.00

Provides funding to establish a Debt Service Accounting position to properly account for the increased activity in the debt service area. With the substantial increased amount of debt that the State has issued and the complexity of the debt instruments, it has become very difficult to manage the increased workload with the current staffing levels.

Recurring	FY2005-06	FY2006-07
531212 Salaries	$56,181	$56,181
531512 Social Security	$4,298	$4,298
531522 Retirement	$3,267	$3,267
531562 Med Insurance	$3,432	$3,432
533110 Gen Office Supplies	$300	$300
Total Recurring	$67,478	$67,478

Nonrecurring	
534511 Furniture-Office	$1,000

The General Fund will be reimbursed from a non-tax revenue source for the amount of the appropriation.

	FY 05-06		FY 06-07	
Total Legislative Changes	**$67,478**	R	**$67,478**	R
	$401,000	NR		
Total Position Changes	1.00		1.00	
Revised Budget	**$8,690,595**		**$8,295,843**	

Treasurer - Retirement for Fire and Rescue Squad Workers

GENERAL FUND

	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$8,146,179**		**$8,146,179**	
Legislative Changes				
1412 Gen. Fund Contribution to Fire Pension Fund				
191 Increase Retirement Benefits Increases the benefits in the Firemen's and Rescue Squad Workers' Pension Fund from $161 to $163 per month for retirees and future retirees effective July 1, 2005.	$405,278	R	$405,278	R
1432 Line of Duty Death Benefit				
192 Increase Death Benefit Funding Increases the funding for death benefits paid, pursuant to G.S. § 143-12A, to survivors of eligible persons killed in the line of duty.	$100,000	R	$100,000	R
Total Legislative Changes	**$505,278**	R	**$505,278**	R
Total Position Changes				
Revised Budget	**$8,651,457**		**$8,651,457**	

TRANSPORTATION
Section K

Transportation

GENERAL FUND

	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$12,027,377**		**$12,945,066**	
Legislative Changes				
(1200) Airport Grants				
1 Reduction in Grants Reduces airport grants to $11,284,198 in FY 2006. This is an increase of $109,454 over funding in FY 2005.	($743,179)	NR		
2 Transfer Support to Highway Fund This reduction is one part of a two step process to shift support of the aviation grant program from the General Fund to the Highway Fund.	($11,284,198)	R	($12,945,066)	R
General Fund Appropriations				
3 City of Lumberton Provides funding to the City of Lumberton for the construction of a new hangar at the Lumberton Municipal Airport to provide storage for aircraft and staging of pilot training during the 2005 Aviation School.	$200,000	NR		
Total Legislative Changes	**($11,284,198)**	R	**($12,945,066)**	R
	($543,179)	NR		
Total Position Changes				
Revised Budget	**$200,000**		**$0**	

Transportation

HIGHWAY FUND

	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$1,399,158,973**		**$1,401,940,921**	
Legislative Changes				
(0041) Aeronautics				
4 Transfer Support from General Fund This increase is the second part of a two step process to shift support of the aviation grant program from the General Fund to the Highway Fund.	$11,284,198	R	$12,945,066	R
5 Airline Recruitment Program Provides funding for an incentive program to attract and retain improved airline services at North Carolina's eleven non-hub airports, where airline passenger traffic levels have been declining due to financial instability among major carriers.	$350,000	R	$350,000	R
(0863) Leaking Underground Storage Tank Fund				
6 Statutory Adjustment In accordance with G.S. 105-119.18, an adjustment based on estimated gallons of motor fuel sold is necessary to bring the Leaking Underground Storage Tank Fund allocation in line with current forecasts. The increase for FY 2006 brings total Highway Fund support for the program under this statute to $6,010,286 in FY 2006.	$156,750	R	$483,777	R
(0866) State Highway Patrol				
7 Additional Troopers Provides funding to increase by ten the number of State Trooper positions for the North Carolina Highway Patrol. The addition of trooper positions will help the SHP advance its mission by promoting safe and efficient transportation for all motorists traveling through North Carolina.	$550,000 $450,000	R NR	$550,000	R
(0866) State Highway Patrol				
8 Sharing of Weigh-In-Motion Data Provides funds so that the Highway Patrol can access data collected by DOT at all existing weigh-in-motion sites.	$40,500	NR		
9 Civilian Weight and and Vehicle Safety Inspection Teams Provides funding for four Grade 58 Data Collector II positions to staff a pilot program to increase the effectiveness of Motor Carrier Enforcement Officers operating remotely from permanent weigh station facilities.	$205,890	NR	$147,448	NR

	FY 05-06		FY 06-07	
10 VIPER (Voice Interoperable Communications Plan for Emergency Responders)	$51,087	R	$51,087	R
Provides funding to continue the deployment of the VIPER Strategic 800 MHZ statewide system. In addition to funding for equipment, funding is also provided for a Network Control Technician I.	$8,000,000	NR		
11 Motor Carrier Position Transition	$2,488,986	R	$2,488,986	R
Provides funds to train and transition all filled Motor Enforcement Officer positions so that they have the same level of arrest authority and pay as other troopers.	$482,829	NR		
(0867) DPI - Driver Training Program				
12 Adjust Driver Education Funding	($607,524)	R	($615,156)	R
Provides funds for a ninth grade average daily membership (ADM) of 132,780 in FY 2006 and 133,580 in FY 2007 at a level of $240 per ADM. With this reduction, Highway Fund support for Driver Education in FY 2006 will be $31,867,200.				
(0868) Transfer to General Fund				
13 Suspend Payment in Lieu of Sales Tax				
Ongoing transfer to the General Fund is suspended for the biennium to compensate the Highway Fund for revenues lost to Fines and Forfeitures Fund.	($16,166,400)	NR	($16,166,400)	NR
(0869) Global Transpark				
14 Global Transpark	$1,600,000	R	$1,600,000	R
Provides funding for the Global Transpark Authority.				
(0871) Employer's Retirement Contribution				
15 Retirement System Contributions	$683,400	R	$683,400	R
Increases the State's contribution for FY 2006 and 2007 to provide a 2.0% cost-of-living adjustment to retirees of the Teachers' and State Employees' Retirement System. This adjustment is funded in part with actuarial gains within the Retirement System.				
16 Disability Income Plan	$13,500	R	$13,500	R
Additional amount needed in recurring funds for each year of the biennium to restore the reduction made during FY 2005. This increases the State's contribution from 0.445% to 0.52% of payroll as recommended by the Plan's actuary to ensure the Plan is adequately funded.				

	FY 05-06		FY 06-07	
(0872) Employer's Contributions - Death Benefit				
17 Death Benefit Trust Additional amount needed, after an adjustment to the Continuation Budget in the amount of $589,000 in recurring funds for each year of the biennium, to restore the reductions made during the 2003-2005 biennium. This restores the State's contribution of 0.16% of payroll as recommended by the Plan's actuary to ensure the Plan is adequately funded.	$54,200	R	$54,200	R
(0873) Salary Increase				
18 State Funded Compensation Increase Provides funds to support the greater of an $850 flat amount or a 2% salary increase for full-time permanent employees supported with Highway Fund appropriations.	$10,364,000	R	$10,364,000	R
(0882) Reserve for Visitor Centers				
19 Increase Funding Provides $25,000 in funding to support the visitor center in Transylvania County.	$25,000	R	$25,000	R
(0885) State Health Plan				
20 Premium Increase Effective October 1, 2005, provides a 12.3% premium increase to the Plan and provides additional funding to continue non-contributory health benefit coverage for active and retired employees. The remaining financial support to keep the Plan solvent through the 2005-2007 biennium will come from increased fully contributory premiums paid by employees and retired employees to cover their families under the Plan, a reduction in the Plan's benefits, and cost containment actions implemented by the Executive Administrator of the Plan.	$5,070,000	R	$6,661,000	R
(0934) Reserve for General Maintenance				
21 Cover Unreimbursed Maintenance Expenditures for Emergency Relief Of funds DOT has expended in previous years on emergency relief for hurricane and ice storm damage, roughly $80 million will not be reimbursed by federal agencies. Funds are appropriated to partially address this $80 million shortfall.	$23,400,000	NR		
22 Increase Funding Provides additional funds to help bring highway infrastructure up to an acceptable level of service and to address significant increases in costs of highway construction materials. These funds are in addition to the continuation budget for maintenance, which amounts to $614,793,288.	$71,000,000 $66,521,251	R NR	$71,000,000	R

	FY 05-06		FY 06-07	
(7025) Information Technology				
23 Online Dealer Registration Enhancement Provides funding to enhance the existing Online Dealer Registration System to allow motor vehicle dealers the option of performing titling and registration services on-site. The enhancement would allow the department to write its own client-server/internet application to interface with the mainframe and replace the present outsourced application resulting in savings and service level improvements. The State CIO has approved $200,000 for a planning project, with a "gate" approval in the project approval and reporting process before allowing the implementation to begin.	$600,000	NR	$200,000	R
24 Document Management System Document management refers to the storage, retrieval, tracking and administration of documents within an organization. The term applies to electronic documents and paper-based documents that have been converted to electronic form. Funding is provided for a feasibility study and pre-implementation preparation for a document management system to improve and streamline information access throughout the entire department. The State CIO has approved $500,000 for a planning project, with a "gate" approval in the project approval and reporting process before allowing the implementation to begin.	$500,000	NR		
25 Email Replacement Provides funding to replace the Department of Transportation's aging and obsolete email system. The current vendor, Netscape, has stopped supporting the email system, the operating system behind it, and the application software. The State CIO has approved $300,000 for a planning project, with a "gate" approval in the project approval and reporting process before allowing the implementation to begin.	$550,000	R	$550,000	R
26 Desktop Computer Replacement The Information Technology Division provides technology support for approximately 8,000 computers within the department. Because of the large number of existing computers, a four year rotation is planned, resulting in one fourth of all computers being replaced each year. This provides the necessary funding.	$1,000,000	R	$1,000,000	R
27 Verification of Customer Identification System Provides funding for hardware and software at local DMV offices to access national databases for validating identification of people applying for driver licenses. The application will be outsourced through a competitive bidding process under the auspices of the State IT Purchasing Office. The department must follow the State CIO's project approval and reporting process, including procurement review and approval. Also the department must follow applicable new and emerging homeland security requirements.	$1,272,000	NR	$300,000	R

	FY 05-06		FY 06-07	
28 Automated Driver License Testing Systems The Driver License section has installed automated testing systems in 45 of its busiest offices and will have additional systems installed in 23 more offices by spring of 2005. Provides additional funds to install the system in 34 more sites that are small to medium in customer volume. This will provide automated testing systems for every office that has two or more examiners.	$185,100 $811,760	R NR	$287,100	R
29 System to Stagger Commercial and Dealer Plates (Senate Bill 1083) Senate Bill 1083, ratified in 2004, mandated the staggered issuance of commercial license plates, dealer license plates, and motor vehicle dealer plates expire on the same date, December 31 for commercial plates and June 30 for dealer plates. The mandated change goes into effect January 1, 2006, and additional funds are provided to accommodate the changes. The department must follow the State CIO's project approval and reporting process. Accordingly, the department must receive approval of a planning project and must also receive a "gate" approval before proceeding to the implementation phase.	$1,280,000	NR	$150,000	R
(7030) General Services				
30 Mail Room Expenses Provides additional funds to match expenditures for the mail room at DMV. The General Services Division administers the mail room services for the Division of Motor Vehicles. All driver license renewal notifications, vehicle registration renewals, and all other DMV related correspondence are processed by this division.	$900,000	R	$900,000	R
31 Division of Motor Vehicles Printing Contract The department's printing and finishing operations are managed by the General Services Division, with the exception of the contract printing and limited finishing services located at the DMV headquarters. The contract for the printing and finishing services expired at the end of 2004. Bids are being solicited for renewal of the existing contractual services in addition to new and expanded services. Provides funding to fully fund the services, including the expanded requirements for additional printing and finishing.	$537,500	R	$1,075,000	R
(7812) Secondary Roads				
32 Statutory Adjustment In accordance with G.S. 136-44.2A, an adjustment based on estimated gallons of motor fuel sold is necessary to bring the Secondary Roads Construction allocation in line with current forecasts. This increase brings total Highway Fund support for the program to $91,910,000 in FY 2006.	$910,000	R	$1,650,000	R

	FY 05-06		FY 06-07	
(7813) Small Construction				
33 Increase Funding Provides additional funds to bring the total recurring budget for small construction to $21,000,000, consistent with funding levels for FY 2005. Nonrecurring funds are provided for economic development, spot safety or Transportation Improvement Program projects.	$7,000,000 $28,000,000	R NR	$7,000,000	R
(7824) Contract Resurfacing				
34 Increase Funding Contract resurfacing is a major component of the State effort to maintain and preserve the State highway infrastructure. Of the $614,793,288 continuation budget for maintenance, $157,208,316 is for contract resurfacing. This action increases the contract resurfacing budget to $186,208,316.	$29,000,000	R	$29,000,000	R
(7825) Ferry Operations				
35 Funds for Maintenance Facility Provides additional funds for the ferry maintenance facility to bring Highway Fund support for the Ferry Division to $21,264,811.	$1,000,000	R	$1,000,000	R
(7829) Rail Program				
36 Piedmont and Carolinian Operating Support Increases operating support.	$777,000	R	$1,570,000	R
37 Grants to Short Line Railroads Creates a state grant program for rehabilitation projects that will strengthen North Carolina's short line infrastructure.	$1,000,000	NR		
(7831) Public Transportation				
38 Reduction in New Start Regional Transit Projects Delays in federal funding for the Triangle Transit Authority allow the State to postpone providing matching funds. These funds were included in the $89,866,447 continuation budget for the Public Transportation program	($23,400,000)	NR		
(7836) State Aid to Municipalities				
39 Statutory Adjustment In accordance with G.S. 136-41.1, an adjustment based on estimated gallons of motor fuel sold is necessary to bring the Aid to Municipalities allocation in line with current forecasts. This increase brings total Highway Fund support for the program to $91,910,000 in FY 2006.	$910,000	R	$1,650,000	R

	FY 05-06		FY 06-07	
Total Legislative Changes	$145,853,197	R	$152,986,960	R
	$92,997,830	NR	($16,018,952)	NR
Total Position Changes				
Revised Budget	$1,638,010,000		$1,538,908,929	

Transportation

HIGHWAY TRUST FUND

	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$1,076,190,000**		**$1,100,330,000**	
Legislative Changes				
(6002) Program Administration				
40 Funds for Highway Trust Fund Administration Adjusts continuation budget based on revised revenue estimates. With this adjustment, program administration in FY 2006 will be $41,295,740.	$647,520	R	$1,353,180	R
(6003) Transfer to General Fund				
41 Transfers Funds to General Fund Increases General Fund transfer to reflect the forgiving of the $125 million loan to the General Fund and the consequent elimination of debt service payments. With this adjustment, the transfer in FY 2006 will be $252,558,117.	$19,500,000	R	$30,100,000	R
(9050) Intrastate System				
42 Funds for Intrastate System Adjusts continuation budget, consistent with statutory formulas, to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. With these changes, the budget will be $472,112,366 in FY 2006.	($1,925,108)	R	$2,575,151	R
(9052) Secondary Road Construction				
43 Funds for Secondary Highway Construction Adjusts continuation budget, consistent with statutory formulas, to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. With these changes, the budget will be $86,825,599 in FY 2006.	($201,989)	R	$270,193	R
(9054) Urban Loops				
44 Funds for Urban Loops Adjusts continuation budget, consistent with statutory formulas, to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. With these changes, the budget will be $190,902,579 in FY 2006.	($778,434)	R	$1,041,283	R

	FY 05-06		FY 06-07	
(9060) Aid to Municipalities				
45 Funds for Aid to Municipalities Adjusts continuation budget, consistent with statutory formulas, to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. With these changes, the budget will be $49,535,599 in FY 2006.	($201,989)	R	$270,193	R
Total Legislative Changes	**$17,040,000**	R	**$35,610,000**	R
Total Position Changes				
Revised Budget	**$1,093,230,000**		**$1,135,940,000**	

RESERVES/ DEBT SERVICE/ ADJUSTMENTS Section L

Reserves, Debt Service and Adjustments

	GENERAL FUND			
	FY 05-06		FY 06-07	
Adjusted Continuation Budget	**$523,532,442**		**$654,263,933**	
Legislative Changes				
A. Employee Benefits				
1 State Funded Compensation Increases	$229,300,000	R	$229,300,000	R
Provide funds to support salary increases for employees of State agencies, departments and universities, community college institutions, and public schools.	$8,000,000	NR		
2 Public School Salary Increases				
Certified Teaching, School Based Administrators and Non-certified Personnel in local Public Schools, State agency based Public Schools, and the NC School of Science and Math.				
Teachers and Instructional Support - Funds are provided to support an experience based step increase for teachers and instructional support personnel (average salary increase of 1.89%) and an increase in the teacher salary schedule of 0.35% for Fiscal Year 2005-2006. Teachers and Instructional support who are at the top of the experience based salary schedule will receive a one-time lump sum bonus equivalent to the average increase from Step 26 to Step 29 (1.58%).				
Principals and Assistant Principals - Funds are provided to support an experience based step increase for school based administrators (avg. salary increase of 1.76%) and an increase in the school based administrator salary schedule of 0.35% for Fiscal Year 2005-2006. School based administrators who are at the top of the salary schedule will receive a one-time lump sum bonus equivalent to 2.0%				
All other Public School Personnel - Provide funds to support the greater of a $850 flat amount or 2.0% annual salary increase.				
3 State Agency and University Salary Increases				
Provide funds to support the greater of a $850 flat amount or 2.0% annual salary increase for full-time permanent employees of agencies, departments, and universities.				
4 Community College Salary Increases				
Provide funds to support the greater of a $850 flat amount or 2.0% annual salary increase for full-time permanent employees of local community college institutions supported by the State and funds for an additional 2.0% average salary increase for Community College faculty and professional staff.				

	FY 05-06		FY 06-07	
5 Fair Minimum Wage for SPA Employees Funds are provided to support a minimum salary of at least $20,112 for all permanent, full-time employees subject to the State Personnel Act and to support proportionate increases to permanent full-time employees working schedules requiring less than 12-months service per year. Funds are also provided to support salary increases to address salary compression and pay inequities created by increasing the salaries of employees to the $20,112 minimum Allows adjustments to the salaries of supervisors and other employees who have, when considering classification, significantly more experience and length of service compared to employees receiving an increase in pay to the $20,112 minimum	$750,000	R	$750,000	R
6 Salary Supplements for Educational Personnel Allows Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention and Correction to increase the salary supplement currently at 5% paid to personnel licensed by the State Board of Education. The maximum increased salary supplement is the percentage supplement of the local school administrative unit where the employee's job site is located.	$314,000	R	$314,000	R
7 Coastal Management Division Salary Increases Funding is provided for fiscal year 2005-2006 and 2006-2007 to increase salaries by 10% for all positions supported with funds appropriated from the General Fund in the Division of Coastal Management.	$112,000	R	$112,000	R
8 Salary Increases for NCSU and NC A&T Agricultural Program Employees Funds are provided to support salary increases for Agricultural Program Employees who are exempt from the State Personnel Act. Increases shall be allocated to individuals in accordance with rules adopted by the UNC Board of Governors.	$4,000,000	R	$4,000,000	R
9 Community College Presidents' Salary Increases Funds are appropriated to provide additional increases to the Community College Presidents. Funds will be allocated in accordance with the Salary Schedule revised by the System Office dated July 27, 2005.	$334,147	R	$334,147	R
10 UNC Chancellors' Salary Increases Funds are appropriated to provide additional salary increases to UNC Chancellors. Increases shall be allocated to individuals in accordance with rules adopted by the UNC Board of Governors.	$334,147	R	$334,147	R
11 Clerks of Superior Court Longevity Service Definition Funds are provided to support increased longevity payments for Clerks of Superior Court by allowing service as a magistrate to count in determining the longevity percentage payable.	$37,033	R	$41,411	R

	FY 05-06		FY 06-07	
12 Retirement System Contributions Increases the State's contribution for fiscal year 2005-06 and 2006-07 to provide a 2% cost-of-living adjustment to retirees of the Teachers' and State Employees' Retirement System. This adjustment is funded in part with actuarial gains within the Retirement System.	$13,810,800	R	$13,810,800	R
13 Retirement System Payback Continue the repayments of funds withheld from the Retirement System in 2001-02 due to the budget crisis. This is the third year of the five-year payback period.	$25,000,000	NR		
14 Disability Income Plan Additional amount needed, after an adjustment to the Continuation Budget in the amount of $6,230,100 in recurring funds for each year of the biennium, to restore the reductions made during the 2004-05 fiscal year. This increases the State's contribution from 0.445% to 0.52% of payroll as recommended by the Plan's actuary to ensure the Plan is adequately funded.	$356,400	R	$356,400	R
15 Death Benefit Trust Additional amount needed, after an adjustment to the Continuation Budget in the amount of $12,000,000 in recurring funds for each year of the biennium, to restore the reductions made during the 2003-2005 biennium. This restores the State's contribution of 0.16% of payroll as recommended by the Plan's actuary to ensure the Plan is adequately funded.	$899,200	R	$899,200	R
16 State Health Plan -- Premium Increase Effective October 1, 2005, provide a 12.3% premium increase to the Plan and provide additional funding to continue non-contributory health benefit coverage for active and retired employees. The remaining financial support to keep the Plan solvent through the 2005-2007 biennium will come from increased fully contributory premiums paid by employees and retired employees to cover their families under the Plan, a reduction in the Plan's benefits, and cost containment actions implemented by the Executive Administrator of the Plan.	$108,648,000	R	$142,728,000	R
B. Debt Service				
17 Adjustment to Debt Service Reduces funds for debt service due to revised estimates for principal and interest payments.	($1,600,474)	R	($17,687,140)	R
18 Debt Service Funds for New State Facilities and Land Acquisition Provides funds to pay debt service requirements associated with various capital improvement and land acquisition projects authorized in S.L. 2004-179 (HB 1264). The General Fund will be reimbursed for the payment of debt service requirements for these projects from various special revenue funds as required by the legislation.	$5,958,723	R	$21,060,827	R

	FY 05-06		FY 06-07	
C. Information Technology				
19 ITS Rate Restructuring Reduces state agency IT budgets in response to a restructuring of the IT rate schedule and the implementation of a new Enterprise Fee for statewide IT activities through the Office of Information Technology Services. Implementation of the new fee schedule is expected to result in a cost savings for certain agencies that have historically subsidized enterprise-wide IT activities. The amount of anticipated cost-savings is captured in this reduction.	($3,000,000)	R	($3,000,000)	R
20 ITS Enterprise Fee Hold Harmless Provides funds to hold affected state agencies harmless as a result of implementing a new Enterprise Fee through the Office of Information Technology Services, as approved by the Office of State Budget and Management.	$700,000	R	$700,000	R
21 Information Technology Fund Provides funds to the Information Technology Fund, established in S.L. 2004-129, for the purpose of carrying out statewide IT programs and activities. Statewide activities include IT project management, security, the state web portal, enterprise-wide procurement of software and hardware. In addition to the General Fund appropriation, a new Enterprise Fee to state agencies will be deposited to the IT Fund, as well as, a transfer from the ITS internal service fund. Total funds available for the 2005-2007 biennium are as follows:	$5,500,000 $500,000	R NR	$5,500,000	R
	FY2005-06	FY2006-07		
General Fund Appropriation	$6,000,000	$5,500,000		
Trans. from ITS Intern. Serv. Fund	$5,000,000			
Enterprise Fee to State Agencies	$5,000,000	$5,000,000		
Total	$16,000,000	$10,500,000		
22 State Business Infrastructure Project Provides funds to the Information Technology Fund established in S.L. 2004-129 for the Office of State Controller to replace the State's aging personnel and payroll information systems, as part of the State Business Infrastructure Project. This appropriation will fund the initial phase of the HR/Payroll project. The HR/Payroll project is currently projected to finish by July 2007 at a total cost of $85.7 million in fixed costs and $7.6 million in recurring costs.	$2,525,000 $15,850,000	R NR	$2,525,000	R
D. Trust Funds				
23 Trust Fund for MH/DD/SAS and Bridge Funding Needs Provides funds pursuant to G.S. 143-15.3D for the purpose of continuing mental health reform efforts.	$10,000,000	NR		

	FY 05-06		FY 06-07	
24 Health and Wellness Trust Fund				
Provides funds to the Health and Wellness Trust Fund for the purpose of operating the Senior Cares prescription drug program. Funds are sufficient to support the program through January 1, 2006, when the federal Medicare Part D prescription drug benefit is available.	$10,000,000	NR		
E. Other Reserves				
25 JDIG Reserve	$4,500,000	R	$7,900,000	R
Provides funds to a reserve controlled by the Office of State Management and Budget from which money will be periodically transferred to meet the cash requirements of the Job Development Investment Program.				
26 Reserve for Fuel Costs				
Provides funds for unanticipated increases in diesel fuel costs not included in the continuation budget. The reserve partially offsets the surge in diesel fuel prices that have held since fall of 2004. The Office of State Budget and Management shall allocate these funds to state agencies based on each agency's inability to offset increased fuel costs with other funds.	$3,000,000	NR		
27 Reserve for Contingent Appropriations	$85,000,000	R	$85,000,000	R
Provides funds to implement Section 2.2(j) of Senate Bill 622.				
Total Legislative Changes	**$458,478,976**	R	**$494,978,792**	R
	$72,350,000	NR		
Total Position Changes				
Revised Budget	**$1,054,361,418**		**$1,149,242,725**	

CAPITAL
Section M

Capital

	GENERAL FUND	
	FY 05-06	FY 06-07
Legislative Changes		
Department of Commerce		
1 State Ports Authority		
Provides capital funds to the Ports of Wilmington and Morehead City for capital equipment, facilities, and infrastructure.	$9,000,000 NR	
Department of Cultural Resources		
2 Capitol Area Visitor's Center		
Provides capital funds for the Capitol Area Visitor's Center.	$250,000 NR	
3 NC Museum of Art		
Provides capital funds for costs related to the expansion of the NC Museum of Art, including new construction, for design completion, surveys, geotechnical testing and material testing.	$10,000,000 NR	
Department of Environment and Natural Resources		
4 Division of Forest Resources - District 9		
Provides capital funds to conduct the planning, design, site preparation and other activities necessary for the relocation and construction of the District 9 Forestry Office for the Sylva District of the Forest Resources Division, the first phase of the State satisfying the condition of the land exchange between Southwestern Community College and the Forest Resources Division.	$300,000 NR	
5 Water Resources Development Projects		
Provides funds for the state share of Water Resources Development Projects. Projects are specified in a special provision.	$15,260,000 NR	
UNC System - Board of Governors		
6 NC A&T Visual/Performing Arts Building		
Provides capital planning funds for construction of a visual/performing arts building at NC A&T State University.	$25,000 NR	
7 NCSU Engineering Complex III		
Provides capital funds for the planning and design of Engineering Complex III, Centennial Campus at NC State University, the third phase of relocating the College of Engineering to Centennial Campus.	$8,700,000 NR	

	FY 05-06		FY 06-07
8 Renaissance Computing Institute			
Provides capital planning funds for a new facility at UNC-Chapel Hill to house the Renaissance Computing Institute. The operating budget for the UNC System also includes $5.9 million for FY 2005-06 and $11.8 million for FY 2006-07 in expansion funds for operating the Renaissance Computing Institute.	$500,000	NR	
9 UNC-Chapel Hill School of Dentistry			
Provides capital funds for the planning and design of the UNC School of Dentistry Oral Sciences Teaching and Learning Facility.	$2,000,000	NR	
10 UNCG/NC A&T Joint Millennium Campus			
Provides capital funds for UNCG and NC A&T's Joint Millennium Campus, including funds for planning, site development, infrastructure and renovation of facilities.	$2,000,000	NR	
11 University of North Carolina - Wilmington			
Provides planning funds for a School of Nursing.	$2,600,000	NR	
12 WSSU Lab Planning Funds			
Provides capital planning funds for a new lab facility at Winston-Salem State University.	$750,000	NR	
Total Appropriation to Capital	**$51,385,000**	NR	

NUMERICAL INDEX TO HOUSE AND SENATE BILLS

2005 GENERAL ASSEMBLY

"Ratified Number" refers to the Session Law number except when preceded by an R, in which case it refers to the Resolution number.

HOUSE BILLS

H.B.	*Ratified Number*	*H.B.*	*Ratified Number*	*H.B.*	*Ratified Number*
9	108	320	345	514	163
11	179	328	305	520	R19
19	R4	329	236	532	166
26	R1	345	110	540	46
27	122	351	16	544	118
35	312	355	152	561	388
45	23	361	R11	563	198
47	R5	370	173	569	356
62	314	371	153	570	73
75	10	375	R12	576	370
85	216	392	277	578	R37
97	146	393	57	580	220
99	448	395	128	581	111
100	R10	398	R14	583	77
105	435	399	35	601	260
116	313	403	154	607	390
125	49	404	155	612	279
131	109	415	48	613	378
182	317	422	257	627	R17
196	175	446	9	630	451
197	R47	451	114	631	79
198	R40	453	R15	635	170
213	R13	464	278	636	415
217	460	470	88	646	424
218	5	476	259	650	425
231	65	478	51	653	181
236	69	485	315	654	206
237	316	488	117	655	234
239	19	489	41	658	102
248	434	490	311	660	215
253	275	496	22	661	399
254	403	497	R16	664	96
277	55	498	52	665	354
278	50	508	38	669	361
288	189	510	178	670	349

H.B.	*Ratified Number*	*H.B.*	*Ratified Number*	*H.B.*	*Ratified Number*
672	132	827	58	1016	287
673	183	828	113	1020	143
676	92	829	360	1021	33
678	125	841	R46	1023	344
686	450	843	53	1028	54
687	301	852	R32	1029	441
689	261	855	457	1030	342
691	306	856	14	1032	205
698	126	857	7	1034	307
699	39	860	43	1047	265
702	161	862	94	1051	219
705	293	869	70	1052	266
707	36	871	47	1054	89
710	91	874	133	1055	107
733	210	878	100	1056	120
735	412	887	30	1060	346
736	289	888	437	1061	18
737	223	890	363	1063	142
740	156	891	352	1064	139
743	112	896	237	1065	140
744	R31	908	37	1076	446
747	382	911	458	1078	308
750	404	916	83	1080	60
752	20	921	15	1085	383
761	64	922	263	1086	359
766	347	923	177	1095	454
768	453	926	288	1096	386
772	62	930	R26	1097	176
774	R33	933	R44	1102	159
779	318	940	81	1112	371
780	40	941	59	1113	R25
786	99	946	34	1115	428
787	433	962	44	1117	238
798	28	963	24	1118	R24
800	169	967	351	1121	449
801	320	973	25	1128	430
803	297	982	31	1136	384
804	180	986	71	1145	339
807	29	987	45	1150	398
810	296	988	303	1163	185
811	42	989	R27	1168	162
813	310	997	32	1169	394
819	290	1004	241	1174	392
820	262	1005	119	1176	401
821	137	1010	264	1189	97
822	145	1012	285	1199	135
825	13	1015	67	1202	322

H.B.	Ratified Number	H.B.	Ratified Number	H.B.	Ratified Number
1206	76	1336	93	1500	350
1207	421	1346	194	1503	160
1209	130	1349	402	1507	299
1213	452	1357	379	1517	416
1217	328	1375	389	1518	348
1221	228	1385	365	1527	409
1226	98	1389	340	1539	397
1227	463	1390	335	1541	422
1236	242	1392	182	1543	393
1240	292	1394	333	1552	165
1243	291	1395	298	1579	R36
1261	439	1400	204	1582	R38
1262	129	1401	337	1604	R28
1266	331	1404	357	1605	R29
1271	330	1409	375	1609	R35
1277	438	1411	338	1615	R50
1279	341	1414	302	1630	144
1280	222	1416	336	1631	201
1281	440	1429	380	1635	405
1284	395	1430	164	1650	R49
1295	436	1434	221	1775	324
1297	273	1436	295	1776	203
1299	304	1464	300	1779	294
1310	419	1465	362	1789	R45
1311	343	1466	272	1793	R53
1316	387	1468	385	1795	R52
1318	353	1469	286	1796	R54
1319	187	1482	168	1797	R56
1320	104	1485	334	1799	R55
1328	319	1491	355	1801	R59
1332	227	1493	427		

SENATE BILLS

S.B.	Ratified Number	S.B.	Ratified Number	S.B.	Ratified Number
3	186	319	400	519	269
7	1	321	149	525	68
14	90	324	268	527	231
15	127	327	396	528	407
16	8	332	12	532	208
32	281	335	188	533	225
41	4	338	202	537	134
43	17	340	174	552	217
62	61	341	252	565	247
71	R6	348	258	566	193
81	R2	356	377	572	66
82	3	368	80	577	209
84	R3	369	233	586	26
88	147	388	141	590	408
92	197	392	157	592	250
98	256	393	429	593	251
109	232	396	136	594	254
116	74	407	116	606	364
128	218	408	271	612	456
133	2	420	245	622	276
138	115	421	230	626	224
148	376	426	R18	629	462
161	R21	428	329	630	195
166	11	435	172	644	284
170	199	442	86	665	459
178	131	443	417	666	214
179	6	450	105	667	212
180	R7	461	244	669	280
182	R8	462	27	671	391
189	282	463	158	679	192
191	246	465	138	681	447
205	R9	466	87	682	326
206	84	472	121	685	124
208	432	474	200	687	283
210	21	482	239	689	148
223	323	486	461	692	255
249	85	494	95	705	431
262	56	505	368	707	240
268	191	506	373	711	366
278	171	507	101	725	444
289	309	510	63	734	123
290	411	512	150	737	358
305	R41	517	274	740	325
316	196	518	418	748	207

S.B.	*Ratified Number*	*S.B.*	*Ratified Number*	*S.B.*	*Ratified Number*
757	410	895	374	1126	455
763	75	907	270	1130	372
776	226	911	420	1134	442
778	211	961	253	1149	413
796	367	972	235	1164	R42
804	369	974	327	1166	R20
806	167	981	190	1167	R22
814	426	988	103	1169	R23
821	151	998	443	1170	R34
832	248	1011	249	1171	R57
844	82	1013	381	1172	R39
856	332	1029	423	1173	R30
867	72	1048	414	1178	R43
868	406	1058	184	1179	R48
879	213	1059	267	1180	R51
883	106	1117	445	1184	R58
884	78	1118	243		
887	229	1124	321		

INDEX TO SESSION LAWS
2005 GENERAL ASSEMBLY
REGULAR SESSION 2005

Suggestions for Use: Local legislation appears under the name of the particular county or locality. Legislation that amends or repeals another session law appears under "Laws Amended or Repealed." General appropriations appear under "Appropriations" or the particular agency following the sub-heading "appropriations". Legislation earmarking appropriations appears under the particular agency and/or subject. Boards, commissions and committees appear as main entries. Numbers are alphabetized as spelled out (i.e. 20 is alphabetized as twenty). Citations sub-sections and sub-sub-sections are shown without parenthesis: thus the citation Chapter 284 sec. 12.6D(a) would be shown as 212(12.6Da).

A

ABC Boards (local)
- Clinton ABC store proceeds distribution 5
- Kenansville membership increase 13

Abortion--Abortion Fund limitations ..... 276(10.50)

Accounting and Auditing
- Child caring institutions overhead rates and reimbursements ..... 276(10.47a)
- Lottery ..... 276(31.1h)–(31.1i)
- Nonprofit reporting requirements ..... 276(13.9a)–(13.9b)
- Opportunities Industrialization centers ..... 276(13.13b)
- School internal controls review fraud incidents ..... 276(7.58)
- Training of political committee treasurers ..... 430(10.1)

Acupuncture Licensing Board
- Appointments and membership ..... 421(1.1)
- Authority to employ certain personnel ..... 379(1)
- Clarify licensure, renewal, lapsed, suspended and other licenses ..... 379(2)
- Continuing education clarification ..... 379(4)
- Fees ..... 379(3)

Administration, Department of
- Advocacy programs study continuation ..... 276(19.1)
- Appropriations
  - Current operations ..... 276(2.1)
  - Oil overcharge funds for State Energy Policy Council projects ..... 276(19.4b)
  - Veterans scholarships funding from escheat fund ..... 276(19.2)
- Children services work group ..... 276(10.25h)
- Division of Veterans Affairs
  - Advocacy programs study continuation ..... 276(19.1)
- Dorothea Dix and Blue Ridge Road properties disposition limited ..... 276(6.25a)–(6.25c)
- Historically underutilized business certification 270
- Inspection and review of prisons constructed through lease-purchase agreements 98

Administration, Department of—continued
Lease purchase and installment purchase activity monitoring ..... 276(6.17a)–(6.17b)
Office of State Construction
Juvenile detention centers study ..... 276(16.9)
Youth development center construction ..... 276(16.10)
Percent increase added to non-resident bids ..... 213(1)
Resident bidder preference on State contracts 213
School bus replacement ..... 276(7.17a)–(7.17b)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Secretary--salary ..... 276(29.2)
State motor vehicle fleet alternative fuel, synthetic lubricant, efficient vehicle plans ..... 276(19.5a)–(19.5c)
State Property Office
Dorothea Dix master plan extension 7
Vendor disclosure of overseas work on contracts 169
Administrative Hearings, Office of--appropriations ..... 276(2.1)
Administrative Office of the Courts (AOC)–*see* Courts
Administrative Rules
Alcohol and drug education traffic school class size and hours rules ..... 312(3)
Animal exhibits permitting and sanitation requirements 191
Controlled substances reporting ..... 276(10.36a)–(10.36c); 345(17)
Early intervention program rules ..... 276(10.54A)
Medicaid emergency and temporary rules to maximize federal funds receipts ..... 276(10.11q)
Mercury switch recovery 384
Nutrient control criteria and management strategy for drinking water supply reservoirs ..... 190(2e)
Residential treatment of children rules ..... 276(10.35B)
Transportation projects rules, policies, and guidelines analysis and approval ..... 276(28.8a)–(28.8b)
Adoption
Block grant funds ..... 276(5.1a)
Consent streamlining 166
Criminal record checks ..... 114(1)–(3)
Difficult to place children adoption incentives study ..... 276(10.49)
Foster care and adoption assistance payments ..... 276(10.46a)–(10.46d)
Guidelines for awarding funds to private/public adoption agencies ..... 276(5.1u)
Shortfall funds ..... 276(5.1z2)
Special children adoption fund ..... 276(10.48a)–(10.48c)
Advertising
Lottery 344
Radio Emergency Associated Communications Teams exempt from solicitation laws 230

Advertising—continued
Solicitation on State highways restriction/prohibition by local government ... 310
Special Zoo Fund for marketing ... 386(5)
Aedin's Law ... 191
Aging
Adult protective services improvement ... 23
Assisted living communities licensure category ... 66
DHHS regulated facilities and services changes to improve quality and safety ... 276(10.40Aa)–(10.40Ar)
Elderly, blind, disabled Medicaid coverage ... 276(10.11e)
Exploitation of elder or disabled adult ... 272
Jury exemption at 72 ... 149
Oil overcharge funds for Weatherization Assistance Program ... 276(19.4a)
Prescription drug access program funding ... 276(10.2)
Prescription drug plan enrollment ... 276(10.4b)
Senior Cares program ... 276(10.4a)–(10.4c)
Senior center outreach ... 276(10.37a)–(10.37c); 345(21)
State-county special assistance
Adult care homes ... 276(10.38a)–(10.38e)
In-home care ... 276(10.39a)–(10.39c); 345(18)
Weatherization program funds ... 276(5.1a)
Agricultural Development and Farmland Preservation Trust Fund Advisory Committee—created ... 390(17)
Agricultural Finance Authority—Executive Director's salary ... 276(29.3)
Agriculture
Agricultural and research extension funds ... 276(9.16)
Agritourism liability limits ... 236
Animal waste management system inspection pilot program extended ... 276(12.7a)–(12.7c)
Conservation easements ... 390
Enhanced voluntary agricultural districts ... 390
Fairs and exhibitions –*see* that heading
Farm machinery sales and use tax ... 276(33.5), (33.9), (33.25)
Low-income elderly outreach ... 276(5.1a)
Pesticide disposal program ... 276(11.1)
Regulatory fees ... 276(42.1a)–(42.1j)
Technical corrections and conforming changes ... 390(1)–(4), (6)–(10)
Tobacco buyouts count towards agricultural land tax exemptions ... 293
Umstead Act exemption for N.C. State dairy laboratory ... 20
Watermelon special plate ... 216(3)–(7)
Agriculture and Consumer Services, Department of
Animal exhibits permitting and sanitation requirements ... 191

Agriculture and Consumer Services, Department of—continued
Animal shelter euthanasia regulation ..... 276(11.5a)–(11.5c); 345(22)
Appropriations
Current operations ..... 276(2.1)
Plant conservation program ..... 276(11.3)
Timber sale funds for certain capital improvements ..... 276(11.2)
Cherry Research Farm capital improvement funds ..... 276(11.2)
Commissioner's salary ..... 276(29.1b)
Grape Growers Council transferred to Commerce Department ..... 380(4a)–(4d)
Pesticide disposal program ..... 276(11.1)
Regulatory fees ..... 276(42.1a)–(42.1j)
State laboratories consolidation study ..... 276(6.36a)–(6.36c); 345(4)
Tidewater Research Station capital improvement funds ..... 276(11.2)
Timber sale funds for agricultural research station and farm capital improvements ..... 276(11.2)
Agriculture, Board of—agriculture regulatory fees ..... 276(42.1a)–(42.1j)
Ahoskie, Town of—overgrown vegetation violators annual notice 202
AIDS (Acquired Immune Deficiency Syndrome)
ADAP (AIDS Drug Assistance Program)
Eligibility ..... 276(10.59a)
Report ..... 276(10.59b)
Block grant funds ..... 276(5.1a)
Foster care and adoption assistance payments ..... 276(10.46c)–(10.46d)
Alamance County
Burlington, City of –*see* that heading
Gibsonville, Town of –*see* that heading
Hurricane recovery 1
Ossipee, Town of –*see* that heading
Alarm Systems Licensing Board
Appointments and membership ..... 421(2.1)
Pay for use of State facilities and services ..... 276(15.2)
Alcoholic Beverage Control Boards (local)–*see* ABC Boards (local)
Alcoholic Beverage Control Commission
Beer and wine sales at certain university and county facilities ..... 327(1)–(3)
Chair's salary ..... 276(29.3)
Container recycling by some permit holders ..... 348(1)–(2)
Revocation of permits 392
Sales in major league sports facilities ..... 327(4)
Wine shop permit ..... 350(2a)–(2c)
Wine tasting permits for viticulture/enology programs ..... 350(3a)–(3b)
Alcoholic Beverages
ABC stores
Location requirement exemption for Leland ..... 305(3)

Alcoholic Beverages—continued
ABC stores—continued
Proceeds distribution for Clinton 5
Proceeds distribution for King's Mountain 73
Alcoholic beverage sales in major league sports facilities ..... 327(4)
Beer and wine sales at certain university and county facilities ..... 327(1)–(3)
Beer franchise agreements ..... 350(4)–(5)
Biometric ID for purchasers of alcohol and tobacco products ..... 350(6a)–(6b)
Concealed weapons carry by ALE officers 337
Container recycling by some permit holders ..... 348(1)–(2)
Duplicative school accreditation requirement repealed 155
Intoxication definition for workers compensation ..... 448(2)
Malt beverages
Alcohol content limit raised 277
Permit elections for cities with railroad terminus 336
Occupancy tax definitions change ..... 276(33.26)–(33.30)
Public transportation operator positive drug test notification 156
Revocation of permits 392
Sales and use tax change ..... 276(33.10)
Split-case fee clarification ..... 380(3)
Transporting without a permit 335
Wine distribution agreements ..... 340; 350(4)–(5)
Wine shipper permit fee repealed ..... 380(1)–(2)
Wine shop permit ..... 350(2a)–(2c)
Wine tasting permits
Requirements ..... 350(1)
Viticulture/enology programs ..... 350(3a)–(3b)
Alexander County
Hurricane recovery 1
Taylorsville, Town of –*see* that heading
Alleghany County
Hurricane recovery 1
No recordation of deed without certificate of no delinquent taxes ..... 433(1a)–(2b)
Alternative Energy
Energy credits program 413
Purchase of alternative-fueled vehicles with energy credit program funds ..... 413(2)–(3)
State motor vehicle fleet alternative fuel, synthetic lubricant, efficient vehicle plans ..... 276(19.5a)–(19.5c)
Alternative Fueled Vehicles—*see* Alternative Energy; Motor Vehicles
Angier, Town of—overgrown vegetation violators annual notice 308

Animals
Access to public facilities for service animals in training 450
Animal shelters
Deposit for care of dog fighting animals 383
Euthanasia regulation ..... 276(11.5a)–(11.5c); 345(22)
Assault on an assistance animal 184
Domestically propagated waterfowl and game birds for dog training 76
Electronic dog collar removal
Statewide 94
Washington County ..... 305(4)
Hunting regulation in Pitt County 42
Annexation (*see also* Planning and Zoning)
Asheville 85
Bolton ..... 141(2)
Burlington ..... 87(1)
Deannexation
Belville 113
Burlington ..... 87(2)
Dortches 60
Gibsonville ..... 87(1)
Thomasville 108
Tobaccoville 51
Walkertown 50
District engineer may sign voluntary annexation petition for right-of-way in Knightdale ..... 433(8a)–(8b)
East Spencer 112
Gibsonville ..... 87(2)
Moratorium on annexations into Cabarrus County by municipalities outside the county ..... 116(2)
Oak Ridge ..... 245(1)
Pineville 119
Roanoke Rapids ..... 9(1)
Satellite annexation cap removed for certain cities ..... 52; 71; 79; 173; 433(9)
Tabor City 8
Utility corridor service rights outside cities ..... 150(2)
Weldon ..... 9(4)
Annuity Disclosure Act ..... 234(1.11)
Anson County
Divide prosecutorial district 20 ..... 276(14.2l)–(14.2q)
Volunteer fire departments funds ..... 345(35)
AOC (Administrative Office of the Courts)—*see* Courts
Apex, Town of
Public-private reimbursement agreements for infrastructure development 41
Swift Creek Management Plan enforcement 89

Appointments
Governor's appointments
Agricultural Development and Farmland Preservation Trust Fund Advisory Committee ....390(17)
Early Childhood Vision Care, Governor's Commission on .... 276(10.59Fd)
Eastern Region Development Commission ....364(1)
Edenton Historical Commission .... 421(3.1a)–(3.1b)
Elections, State Board of....276(23A.3)
Interstate Juvenile Supervision, State Council For 194
Lottery Commission, State....276(31.1d)–(31.1e); 344(1)
Manufactured Housing Board....451(3)
Occupational Therapy, Board of....432(3)
Perfusionist Advisory Committee 267
Post-Release Supervision and Parole Commission.... 276(17.25a)–(17.25b)
Recreational Therapy Licensure, Board of 378
Umstead Act review panel created....397(2)–(4)
Water Infrastructure Commission, State ....454(3)
President Pro Tempore's appointments
Agricultural Development and Farmland Preservation Trust Fund Advisory Committee ....390(17)
Alarm Systems Licensing Board....421(2.1)
Appraisal Board....421(2.2)
Athletic Trainer Examiners, Board of....421(2.3)
Bridge Authority ....421(2.3A)
Building Commission, State....421(2.55)
Capital Facilities Finance Agency Board of Directors ....421(2.4)
Cemetery Commission ....421(2.5)
Center for Nursing, Board of Directors....421(2.35)
Center for the Advancement of Teaching, Board of Trustees....421(2.64)
Child Care Commission ....421(2.6)
Chiropractic Examiners, State Board of....421(2.7a)
Clean Water Management Trust Fund Board of Trustees....421(2.8)
Coordination of Children's Services Study Commission ....276(10.25i)
Cosmetic Art Examiners, State Board of....421(2.9)
Crime Victims Compensation Commission....421(2.10)
Criminal Justice Education and Training Standards Commission ....421(2.11)
Criminal Justice Information Network Governing Board....421(2.12)
Dietetics/Nutrition, Board of....421(2.13)
Dispute Resolution Commission....421(2.14)
Domestic Violence Commission....421(2.15)
Domestic Violence, Joint Legislative Committee on....356(1)

Appointments—continued
President Pro Tempore's appointments—continued
Early Childhood Vision Care, Governor's Commission on ..... 276(10.59Fd)
Eastern Region Development Commission ..... 364(1)
Economic Development Oversight Committee, Joint Legislative ..... 241(7)
Edenton Historical Commission ..... 421(3.1a)–(3.1b)
Electrolysis Examiners, Board of ..... 421(2.16)
Emergency Medical Services Advisory Council ..... 421(2.17)
E-NC Authority ..... 421(2.18)
Environmental Management Commission ..... 421(2.19)
Fee-Based Practicing Pastoral Counselors, State Board of Examiners Of ..... 421(2.20)
Fire and Rescue Commission, State ..... 421(2.21)
Funeral Service, North Carolina Board of ..... 421(2.22)
Global Climate Change, Legislative Commission on ..... 442(1)
Health Insurance Innovations Commission ..... 421(2.24)
Heart Disease and Stoke Prevention Task Force, Justus-Warren ..... 421(2.28)
Housing Finance Agency Board of Directors ..... 421(2.25)
Housing Partnership ..... 421(2.26)
Indian Affairs, State Commission Of ..... 421(2.27)
Interstate Juvenile Supervision, State Council For 194
Judicial Council, State ..... 421(2.56)
License to Give Trust Fund Commission ..... 421(2.29)
Local Government Commission ..... 421(2.30)
Locksmith Licensing Board ..... 421(2.31)
Lottery Commission, State ..... 276(31.1d)–(31.1e); 344(1)
Mental Health, Developmental Disabilities, and Substance Abuse Services, Commission For ..... 421(2.32)
Methamphetamine Abuse, Legislative Commission on ..... 434(7)
Museum of Art Board of Trustees ..... 421(2.33)
Natural Heritage Trust Fund Board of Trustees ..... 421(2.33A)
North Carolina Railroad Board of Directors ..... 421(2.44)
Northeastern North Carolina Regional Economic Development Commission ..... 421(2.34)
Nursing Scholars Commission ..... 421(2.36)
Parks and Recreation Authority ..... 421(2.37)
Partnership for Children, Inc., Board of Directors ..... 421(2.38)
Persons With Disabilities, Governor's Advocacy Council For ..... 421(2.23)
Petroleum Underground Storage Tank Funds Council ..... 421(2.39)
Ports Authority, Board of State ..... 421(2.58)
Private Protective Services Board ..... 421(2.40)
Public Employee Deferred Compensation Plan, Board of Trustees ..... 421(2.41)

Appointments—continued
President Pro Tempore's appointments—continued
Public Telecommunications, Agency For, Board of Directors ....421(2.43)
Public Television, UNC Center For, Board of Trustees ....421(2.42)
Real Estate Commission ....421(2.45)
Recreational Therapy Licensure, Board of 378
Roanoke Island Commission....421(2.46)
Rules Review Commission ....421(2.47)
Science and Mathematics, School of, Board of Trustees....421(2.49)
Science and Technology, Board of ....421(2.50)
Seafood Industrial Park Authority ....421(2.48)
Sheriff's Education and Training Standards Commission....421(2.52)
Soil Scientists, Board for Licensing Of....421(2.51)
Southeastern North Carolina Regional Economic Development Commission....421(2.53)
Southern Dairy Compact Commission....421(2.54)
State Personnel Commission....421(2.57)
Substance Abuse Professionals Certification Board....421(2.60)
Teacher Academy, Board of Trustees....421(2.61)
Teachers' and State Employees' Comprehensive Major Medical Plan, Board of Trustees....421(2.62)
Teachers' and State Employees' Retirement System, Board of Trustees....421(2.63)
Teaching Fellows Commission....421(2.65)
Therapeutic Recreation Certification, State Board of....421(2.66)
Turnpike Authority....421(2.67)
Umstead Act review panel created....397(2)–(4)
Virginia-North Carolina Interstate High-Speed Rail Compact Commission....421(2.68)
Water Infrastructure Commission, State ....454(3)
Well Contractors Certification Commission....421(2.69)
Western North Carolina Regional Economic Development Commission....421(2.70)
Wildlife Resources Commission....421(2.71)
Wireless 911 Board ....421(2.72)
Workers' Compensation Benefits, Study Committee on....448(1b)
Secretary of Commerce's appointments
Grape Growers Council.... 380(4a)–(4b)
Secretary of HHS's appointments
Local Health Department Accreditation Board....369(1b)
Secretary of Juvenile Justice and Delinquency Prevention's appointments
Interstate Juvenile Supervision, State Council for 194
Speaker's appointments
Acupuncture Licensing Board....421(1.1)
Agricultural Development and Farmland Preservation Trust Fund Advisory Committee ....390(17)

Appointments—continued
Speaker's appointments—continued
Appraisal Board....421(1.2)
Athletic Trainer Examiners, Board of....421(1.3)
Bridge Authority....421(1.4)
Building Commission, State....421(1.51)
Capital Facilities Finance Agency Board of Directors....421(1.5)
Centennial Authority....421(1.7)
Center for Nursing, Board of Directors....421(1.32)
Center for the Advancement of Teaching, Board of Trustees....421(1.58)
Child Care Commission....421(1.8)
Chiropractic Examiners, State Board of....421(1.9)
Clean Water Management Trust Fund Board of Trustees....421(1.10)
Coordination of Children's Services Study Commission....276(10.25i)
Criminal Justice Education and Training Standards Commission....421(1.11)
Criminal Justice Information Network Governing Board....421(1.12)
Dietetics/Nutrition, Board of....421(1.13)
Disciplinary Hearing Commission of the State Bar....421(1.14)
Domestic Violence Commission....421(1.15)
Domestic Violence, Joint Legislative Committee on....356(1)
Early Childhood Vision Care, Governor's Commission on....276(10.59Fd)
Eastern Region Development Commission....364(1)
Economic Development Oversight Committee, Joint Legislative....241(7)
Edenton Historical Commission....421(3.1a)–(3.1b)
Education Commission of the States....421(1.16)
E-NC Authority....421(1.17)
Environmental Management Commission....421(1.18)
Funeral Service, North Carolina Board of....421(1.19)
Global Climate Change, Legislative Commission on....442(1)
Global TransPark Authority....421(1.20)
Heart Disease and Stoke Prevention Task Force, Justus-Warren....421(1.24)
Home Inspector Licensure Board....421(1.21)
Housing Finance Agency Board of Directors....421(1.22)
Interpreter and Transliterator Licensing Board....421(1.23)
Interstate Juvenile Supervision, State Council For....194
License to Give Trust Fund Commission....421(1.25)
Local Government Commission....421(1.26)
Locksmith Licensing Board....421(1.27)
Lottery Commission, State....276(31.1d)–(31.1e); 344(1)

Appointments—continued
Speaker's appointments—continued
Mental Health, Developmental Disabilities, and Substance Abuse Services, Commission for....421(1.28)
Methamphetamine Abuse, Legislative Commission on....434(7)
Museum of Art Board of Trustees....421(1.29)
Natural Heritage Trust Fund, Board of Trustees....421(1.30)
North Carolina Railroad Board of Directors....421(1.42)
Northeastern North Carolina Regional Economic Development Commission....421(1.31)
Nursing Scholars Commission....421(1.33)
Parks and Recreation Authority....421(1.34)
Partnership for Children, Inc., Board of Directors....421(1.35)
Persons With Disabilities, Governor's Advocacy Council For....421(1.36)
Petroleum Underground Storage Tank Funds Council....421(1.37)
Ports Authority, Board of State....421(1.53)
Private Protective Services Board....421(1.38)
Property Tax Commission....421(1.39)
Public Employee Deferred Compensation Plan, Board of Trustees....421(1.40)
Public Telecommunications, Agency For, Board of Directors....421(1.41)
Public Television, UNC Center For, Board of Trustees....421(1.61)
Real Estate Commission....421(1.43)
Recreational Therapy Licensure, Board of....378
Roanoke Island Commission....421(1.44)
Rules Review Commission....421(1.45)
Science and Technology, Board of....421(1.47)
Seafood Industrial Park Authority....421(1.46)
Sheriff's Education and Training Standards Commission....421(1.48)
Soil Scientists, Board for Licensing Of....421(1.49)
Southeastern North Carolina Regional Economic Development Commission....421(1.50)
State Personnel Commission....421(1.52)
State Property, Commission on....421(1.54)
Teacher Academy, Board of Trustees....421(1.55)
Teachers' and State Employees' Comprehensive Major Medical Plan, Board of Trustees....421(1.56)
Teachers' and State Employees' Retirement System, Board of Trustees....421(1.57)
Teaching Fellows Commission....421(1.59)
Therapeutic Recreation Certification, State Board of....421(1.60)
Umstead Act review panel created....397(2)–(4)
Virginia-North Carolina Interstate High-Speed Rail Compact Commission....421(1.62)

Appointments—continued
Speaker's appointments—continued
Water Infrastructure Commission, State ..... 454(3)
Western North Carolina Regional Economic Development Commission ..... 421(1.63)
Wildlife Resources Commission ..... 421(1.64)
Workers' Compensation Benefits, Study Committee on ..... 448(1b)
Appraisal Board—appointments and membership ..... 421(1.2)–(2.2)
Appropriations
Block Grants
DHHS block grant funds ..... 276(5.1a)–(5.1cc)
NER Block Grants ..... 276(5.2a)–(5.2g)
Capital Appropriations
Appropriations limits reversion or lapse ..... 276(30.10)
Capital funds disbursement procedures ..... 276(30.4)
Cultural Resources, Department of ..... 276(30.2)
Encumbered appropriations and special reserve funds ..... 276(30.5)
DENR ..... 276(30.2)
Ports Authority ..... 276(30.2)
Project cost increase ..... 276(30.7)
Reserve for Repairs and Renovations allocation ..... 276(30.6a)–(30.6c)
University of North Carolina ..... 276(30.2)
Cash balances and receipts ..... 276(6.1a)–(6.1d)
Civil Penalty and Forfeiture Fund ..... 276(6.37a)–(6.37w)
Contingency and Emergency Fund ..... 276(6.2)
Continuation budget 144; 201; 246
Current Operations
General Fund ..... 276(2.1)
Availability ..... 276(2.2a)–(2.2j); 345(1b)
Contingency and Emergency Fund ..... 276(2.1)
Debt service ..... 276(2.1)
Health and Wellness Trust Fund ..... 276(2.1)
Information Technology Fund ..... 276(2.1)
Land use and conservation easements on military base adjacent land ..... 445(1A.2)
MH/DD/SAS Trust Fund ..... 276(2.1)
Military morale, recreation, and welfare funds ..... 445(1A.1a)
Reserve for Compensation Increases ..... 276(2.1)
Reserve for Contingent Appropriations ..... 276(2.1)
Reserve for Death Benefit Trust ..... 276(2.1)
Reserve for Disability Income Plan ..... 276(2.1)
Reserve for Increased Fuel Costs ..... 276(2.1)
Reserve for Information Technology Rate Adjustments ..... 276(2.1)
Reserve for Job Development Investment Grants ..... 276(2.1)
Reserve for Retirement System Payback ..... 276(2.1)
Reserve for State Health Plan ..... 276(2.1)

Appropriations—continued
Current Operations—continued
General Fund—continued
Reserve for Teachers' and State Employees' Retirement Contribution ..... 276(2.1)
Salary Adjustment Fund ..... 276(2.1)
Highway Fund ..... 276(3.1)
Highway Trust Fund ..... 276(4.1)
Disaster Relief Reserve Fund ..... 1(4.1a)–(4.1h)
Highway Fund Availability ..... 276(3.2), (28.3a)
Highway Trust Fund Availability ..... 276(28.3b)
Information Technology Fund Availability ..... 276(6.13a)–(6.13c)
Joint Conference Committee report ..... 276(46.2a)–(46.2c)
Overhead cost recovery ..... 276(6.6a)–(6.6d)
Recommended budget reports ..... 276(6.4)
Reserve for Compensation
Salary adjustment fund ..... 276(29.15a)–(29.15e)
Teachers' salaries ..... 276(29.17)
Reserve funds expenditures ..... 276(6.3)
State road system definition clarification ..... 382(1)
Technical corrections and conforming changes 345
Transfer of Insurance Regulatory Funds to General Fund ..... 276(21.1)
Zero-based budget review ..... 276(6.34a)–(6.34c)
Archaeology—*see* Cultural Resources
Archdale, City of—extraterritorial jurisdiction 115
Armed Forces
Admission to School of Science and Mathematics for active duty military dependent ..... 445(8.1)–(8.2)
Air medal recipient special plate ..... 216(3)–(7)
Cold War Veteran special plate ..... 216(3)–(7)
Concealed handgun permit renewal extension for military personnel 232
Defense Technology Innovation Center funds ..... 276(8.11); 345(10)
Early termination of agreements by military personnel ..... 445(4.1)–(4.2)
Exclusive jurisdiction over land acquired by federal government limited 69
Expediting of professional licensing processes for military spouses ..... 445(2.1)–(2.2b)
High school credit policies for families of military personnel ..... 445(6)
In-state tuition for discharged military and dependants ..... 345(14)
Land use and conservation easement funds for military base adjacent land ..... 445(1A.2)
Marine Corps League special plate ..... 216(3)–(7)
Military morale, recreation, and welfare funds ..... 445(1A.1a)–(1A.1c)

Armed Forces—continued
National Guard
Adjutant General 314
Retirement –*see* that heading
Tuition assistance program 444
Warren National Guard armory asbestos/lead abatement ..... 345(32)
Public Instruction liaison with military bases feasibility ..... 445(5)
Veterans
Advocacy programs study continuation ..... 276(19.1)
Cemetery funding ..... 276(19.3)
Scholarships funding from escheat fund ..... 276(19.2)
Arts—*see* Cultural Resources
Ashe County
Hurricane recovery 1
No recordation of deed without certificate of no delinquent taxes ..... 433(1a)–(2b)
West Jefferson, Town of –*see* that heading
Asheville, City of
Annexation 85
Colburn Gem and Mineral Museum grassroots science program grant-in-aid ..... 276(12.5a)
Health Adventure Museum at Pack Place grassroots science program grant-in-aid ..... 276(12.5a)
Public enterprise operations 139
TSERS participation by Evergreen Charter School 315
UNC-Asheville –*see* University of North Carolina
Water rates 140
Western North Carolina Nature Center grassroots science program grant-in-aid ..... 276(12.5a)
Assisted Living Facilities—*see* Nursing Homes
Athletic Trainer Examiners, Board of—appointments and membership ..... 421(1.3)–(2.3)
Atlantic Beach, Town of—overgrown vegetation violators annual notice 175
Attorney General
Campus Police Act 231
Cause of action filing under Sedimentation Pollution Control Act ..... 386(7.3)
Electronic surveillance orders 207
Police information network fee ..... 276(43.4a)–(43.4c)
Representation of Agriculture Dept. in animal shelter regulation issues ..... 276(11.5c)
Salary ..... 276(29.1b)
Attorneys
Attorneys' fees awarded in actions enforcing planned community rules 214
Health care power of attorney after death 351

Attorneys—continued
Indigent defense attorney fees ..... 276(14.13)
No copy fee for attorneys appointed to defend indigents 251
Power of attorney enforcement 178
State Bar member surcharge for Public Campaign Fund ..... 276(23A.1a)–(23A.1e)
Auctioneers Commission—clarifications 330
Audits and Auditing—*see* Accounting and Auditing
Aurora, Town of—Aurora Fossil Museum grassroots science program grant-in-aid ..... 276(12.5a)
Authorities
Airport Authorities –*see* Aviation
Bridge Authority –*see* that heading
Centennial Authority –*see* that heading
Education Assistance Authority –*see* that heading
E-NC Authority –*see* that heading
Global TransPark Authority –*see* that heading
Parks and Recreation Authority –*see* that heading
Public Transportation Authorities treated as cities for purposes of civil liability 160
Seafood Industrial Park Authority –*see* that heading
Tourism Development Authorities
Duplin County 53
Elizabeth City 16
Halifax County 46
Roanoke Rapids 46
West Jefferson 49
Turnpike Authority –*see* that heading
Water and sewer authority member per diem increase ..... 127(2)
Automobile Repair—*see* Motor Vehicles
Avery County—hurricane recovery 1
Aviation
Air carrier fuel sales and use tax refund ..... 435(61)
Aircraft parts and materials sales and use tax ..... 276(33.9)
Airport Authorities
Authorization to borrow money ..... 342(4)
Brunswick County Airport Commission powers clarified ..... 342(1)–(3)
Craven County changes 14
Foothills Regional Airport Authority property conveyance 171
Jackson membership changed ..... 219(19a)–(19b)
Macon-Jackson Regional Airport Authority created ..... 219(1)–(18), (21)
Moratorium on airport hanger construction contract for Jackson County Airport 203
Rutherford property lease 105
Airport property conveyed to Currituck County 18

Aviation—continued
Aviation appropriations continuation for Transportation Dept. 276(28.12)
Horace Williams Airport operation and study 276(9.15)
Operations of some aircraft in Jackson and Macon Counties limited 219(18)
Removal of abandoned airplanes from public property in Ocean Isle Beach 59
Use of laser device towards aircraft unlawful 329
Ayden, Town of
Overgrown vegetation violators annual notice 81
Satellite annexation cap removed 71

B

Bakersville, Town of
Mayors term 43(2)
Name change of governing board 43(1)
Town council term 43(3)
Banking Commission, State
Action against licensee/applicant falsifying continuing education 316(7)
Commissioner's salary 276(29.3)
Employees exempt from State Personnel Act 284
Money transmissions to locations outside US disclosure 104
Bankruptcy—*see* Courts; Debtor and Creditor
Beaufort County
Aurora, Town of –*see* that heading
Belhaven Harbor environmental improvements 276(30.3a)
Election of certain public officials according to general law 263
Indigent defense positions 345(28)
TANF electing county 276(10.51b)
Beaufort, Town of
Friends of the Maritime Museum tall ships event funds 276(28.28)
Unregistered all-terrain vehicle use 305(1)
Belmont, City of
Occupancy tax 220(1)–(2)
Petition procedure for street lighting 111
Belville, Town of—deannexation 113
Bertie County
Windsor, Town of –*see* that heading
Bethel, Town of—Bethel Public Library 345(34)
Bicycles–*see* Recreation and Leisure
Bids and Bidding—*see* Contracts and Purchases
Bill Lee Act 241
Biotechnology—funding from Biotechnology Center 276(13.10b)

Biotechnology Center
Appropriations—current operations ..... 276(2.1)
Funding directive ..... 276(13.10b)
Funds recapture ..... 276(13.10a)
Reports –*see* that heading
Black Mountain, Town of—vehicle tax for public transportation ..... 306(2a)–(2b)
Bladen County
Bladenboro, Town of –*see* that heading
Elizabethtown, Town of –*see* that heading
Hurricane recovery 1
Bladenboro, Town of
Golf cart regulation ..... 11(1)
Public nuisance ordinance violator notification ..... 305(10a)–(10b)
Blowing Rock, Town of—off-street parking fund 86
Boards—*see* Commissions, Committees, Councils and Boards
Boating
No wake zone clarification for Cedar Point ..... 433(4)
Obstruction of boat ramp fine limited 164
Personal watercraft operator minimum age 161
Bolton, Town of—annexation ..... 141(2)
Bombs—*see* Explosives
Bonding and Surety—*see* Surety And Fidelity
Bonds and Notes—*see* Debt-Local Government; Debt-State Government
Boone, Town of
Appalachian State University –*see* University of North Carolina
Bridge Authority—appointments and membership ..... 421(1.4), (2.3A)
Bridges—*see* Roads and Highways
Broadway, Town of—public-private reimbursement agreements for infrastructure development 41
Brunswick County
Belville, Town of –*see* that heading
Brunswick County Airport Commission powers clarified ..... 342(1)–(3)
Caswell Beach, Town of –*see* that heading
Holden Beach, Town of –*see* that heading
Leland, Town of –*see* that heading
Lower Lockwoods Folly River ..... 276(30.3a)
Ocean Isle Beach, Town of –*see* that heading 59
Shallotte, Town of –*see* that heading
Trash trucks may stop on pavement outside municipal limits 266
Budget and Management, Office of State
Advanced Vehicular Research Center funds ..... 276(13.8Aa)

Budget and Management, Office of State—continued
Appropriations
Charlotte Hawkins Brown State Historic Site capital funds ..... 276(30.6b)
Current operations ..... 276(2.1)
Block grant changes approval ..... 276(5.1d)
Capital project cost increase ..... 276(30.7)
Criminal records checks fee adjustment study ..... 276(15.5b)
Distance education study ..... 276(9.7)
DNA testing and analysis costs study ..... 276(15.8)
E-commerce fees approval 92
Enrollment growth funding model review ..... 276(9.4)
Equipment carryforward for community colleges ..... 276(8.2a)–(8.2b)
Infrastructure information collection and management methods study ..... 276(6.33a)–(6.33b)
Juvenile detention centers study ..... 276(16.9)
Lease purchase and installment purchase activity monitoring ..... 276(6.17a)–(6.17b)
Military Morale, Recreation, and Welfare Fund ..... 445(1A.1a)–(1A.1c)
Multiyear information technology infrastructure maintenance contracts authorized ..... 276(20A.1a)–(20A.1c)
New project capital authorization ..... 276(30.8)
Overhead cost recovery study ..... 276(6.6b)–(6.6c)
Personal service contracts reports ..... 276(6.38)
Receipt-supported positions ..... 276(6.5)
Recommended budget reports ..... 276(6.4)
Senior prescription drug access program funding ..... 276(10.2)
State laboratories consolidation study ..... 276(6.36a)–(6.36c); 345(4)
Building Codes (*see also* Planning and Zoning)
Code official professional development program established 102
Public toilets in malls ..... 289(2)
Building Commission, State
Appointments and membership ..... 421(1.51), (2.55)
Capital improvement project bid process for small community colleges ..... 370(1)–(2)
Buildings
Public toilets in malls ..... 289(2)
Repair or demolition of dwellings unfit for habitation in certain cities ..... 200; 305(12a)–(12b)
Smoking regulation exemption for large indoor arenas 239
Buncombe County
Asheville, City of –*see* that heading
Black Mountain, Town of –*see* that heading
Hurricane recovery 1
Water rates 140

Burke County
Foothills Regional Airport Authority property conveyance 171
Hurricane recovery 1
Personnel use for economic development activities by Western Piedmont CC 63
Burlington, City of
Annexation ..... 87(1)
Deannexation ..... 87(2)
Restrictions for persons soliciting on highways and streets 30
Buses—*see* Education; Public Transportation
School bus replacement funds ..... 276(7.17a)–(7.17b)
School transportation study ..... 276(7.57); 345(8)
Business Committee for Education, Inc.—Center for 21st Century Skills created ..... 276(7.39a)–(7.39c)
Business Corporation Act 268
Butner—tax increases ..... 276(43.3a)–(43.3b); 345(49)

C

Cabarrus County
Hurricane recovery 1
Kannapolis, City of –*see* that heading
Moratorium on annexations into county by municipalities outside the county ..... 116(2)
Public-private reimbursement agreements for infrastructure development 41
Vehicle tax increase ..... 116(1a)–(1b)
Cafes and Restaurants—*see* Food Services
Caldwell County
Blowing Rock, Town of –*see* that heading
Foothills Regional Airport Authority property conveyance 171
Hurricane recovery 1
TANF electing county ..... 276(10.51b)
Campaign Finance—*see* Elections
Campus Police Act 231
Cancer—*see* Diseases
Canton, Town of—flood protection upgrade funds ..... 1(5.1e)
Capital Facilities Finance Agency Board of Directors
Appointments and membership ..... 421(1.5), (2.4)
Museums are special purpose project for bond issuance ..... 238(10)
Capital Punishment
Death penalty training funds for indigent defense ..... 276(14.8)
Violation of protective order aggravating factor in capital sentencing study 295
Carolinas Partnership, Inc.
Appropriations ..... 276(13.6a)–(13.7b), (13.6C)
Reports –*see* that heading

Carrboro, Town of—vehicle tax ..... 306(1a)–(1c)
Carteret County
Atlantic Beach, Town of –*see* that heading
Beaufort, Town of –*see* that heading
Bogue Banks shore protection study ..... 276(30.3a)
Cedar Point, Town of –*see* that heading
Convention center plan deadline 120
Morehead City, City of –*see* that heading
Newport, Town of –*see* that heading
Occupancy tax extended 120
Cary, Town of
Charter consolidation 117
Public-private reimbursement agreements for infrastructure development 41
Swift Creek Management Plan enforcement 89
Caswell Beach, Town of—golf cart regulation 58
Caswell County—hurricane recovery 1
Catawba County
Claremont, City of –*see* that heading
Hickory, City of –*see* that heading
Hurricane recovery 1
TANF electing county ..... 276(10.51b)
Cedar Point, Town of—no wake zone clarification ..... 433(4)
Cemeteries–*see* Funeral Services
Cemetery Commission—appointments and membership ..... 421(2.5)
Census—precinct boundary program ..... 428(16)
Centennial Authority—appointments and membership ..... 421(1.7)
Center for Applied Textile Technology—*see* Community Colleges
Center for Nursing, Board of Directors—appointments and membership ..... 421(1.32), (2.35)
Center for the Advancement of Teaching, Board of Trustees—appointments and membership ..... 421(1.58), (2.64)
Certificates of Registration—*see* Licenses and Permits
Chapel Hill, Town of
UNC-Chapel Hill –*see* University of North Carolina
Charitable Contributions (*see also* Corporations, Non-Profit)—raffles maximum cash prize ..... 345(31)
Charlotte, City of
Discover Place grassroots science program grant-in-aid ..... 276(12.5a)
NASCAR Hall of Fame 68
Occupancy tax 68
Traffic control cameras pilot program extension 27
UNC-Charlotte –*see* University of North Carolina
Charter Schools—*see* Education
Charters
ABC proceeds distribution for King's Mountain 73
Assessments without petition for Kill Devil Hills 142

Charters—continued
Board of Adjustment appointment according to general law for Wrightsville Beach ... 265
Consolidation Cary ... 117
Corporate limits clarified for Salemburg ... 84(1)
Election law changes for High Point ... 54(1b)
Extraterritorial and planning jurisdiction for St. James ... 305(2)
Mayor and town council terms for Watha ... 141(1)
Mayor Pro Tem election in High Point ... 54(1a)
Mayor's term in Claremont ... 54(2)
Oak Ridge voluntary annexations ... 245(1)
Police chief hiring for Monroe ... 17
Purchases and leases of real property by city employees in Raleigh ... 157(1)
Removal of Cornelius mayor or commissioner for cause ... 188
Sale of equipment to public safety employees on retirement for Raleigh ... 157(2)
Soliciting on highways and streets restrictions in Burlington ... 30
Town center defined for Waco ... 199
Town commissioners' terms for Gibson ... 61
Town Manager to appoint Town Clerk and Treasurer in Pilot Mountain ... 433(10.1)
Chatham County
Board of Education elections ... 309
Goldston, Town of –*see* that heading
Pittsboro, Town of –*see* that heading
Public-private reimbursement agreements for infrastructure development ... 41
Seagrove designated birthplace of North Carolina pottery ... 78
Siler City, Town of –*see* that heading
Child Abuse—*see* Minors
Child Care Commission—appointments and membership ... 421(1.8), (2.6)
Child Custody—*see* Divorce
Child Support—*see* Divorce
Chiropractic Examiners, State Board of—appointments and membership ... 421(1.9), (2.7a)
Chiropractors—co-payments for chiropractic care higher than similar physician care prohibited ... 276(6.29); 345(3a)–(3c)
Chowan County—hunting on private property prohibited without written permission in certain counties ... 433(5)–(6)
Cigarettes and Smoking—*see* Tobacco
Civil Procedure—*see* Courts
Claremont, City of—mayor's term ... 54(2)

Clean Water Management Trust Fund Board of Trustees
Appointments and membership ..... 421(1.10), (2.8)
Conservation easements stewardship study ..... 276(6.22)
Clean Water Revolving Loan and Grant Act 454
Clemmons, Village of—delinquent storm water fee collection procedure for certain counties ..... 441(3a)–(3b)
Cleveland County
Cleveland Correctional Center minimum security conversion study ..... 276(17.18)
Hurricane recovery 1
Kings Mountain, City of –*see* that heading
Clinton, City of—ABC store proceeds distribution 5
Coastal Resources
Belhaven Harbor environmental improvements ..... 276(30.3a)
Bogue Banks shore protection study ..... 276(30.3a)
Canal dredging fee for certain cities 47; 90
Coastal Conservation Association special plate ..... 216(3)–(7)
Coastal habitat protection plan implementation funds ..... 443(1)
Currituck sound water management study ..... 276(30.3a)
Dare County sales and use tax for beach nourishment ..... 276(33.33)
Express DENR permit and certification reviews ..... 276(12.2a)–(12.2d)
Far Creek maintenance dredging ..... 276(30.3a)
Manteo (Shallowbag) Bay channel maintenance funds ..... 276(30.3a)
Ocracoke NCCAT estuarine shoreline protection ..... 276(30.3a)
Oregon Inlet funds do not revert ..... 276(13.1b)
Oyster habitat restoration ..... 276(30.3a)
Ports –*see* that heading
Surf City/North Topsail beach protection study ..... 276(30.3a)
Tar River and Pamlico Sound feasibility study ..... 276(30.3a)
Walters Slough maintenance dredging ..... 276(30.3a)
West Onslow Beach ..... 276(30.3a)
Wrightsville Beach nourishment ..... 276(30.3a)
Code Officials Qualification Board
Examination fees ..... 289(1)
Professional development program established 102
Strengthen building permit issuance requirements ..... 276(21.2)
Colleges and Universities (*see also* Community Colleges; University of North Carolina)
Academic Common Market program ..... 276(9.24)
Alpha Phi Alpha Fraternity special plate ..... 216(3)–(7)
Campus Police Act 231
Escheat Fund investment program for benefit of needy higher education students 252
High school innovation flexibility ..... 276(7.33a)–(7.33b)
Higher education strategy study extended ..... 276(9.18)
Johnson and Wales University funds ..... 276(13.6b)
Learn and earn high school program ..... 276(7.32a)–(7.32d); 345(6a)–(6c)

Colleges and Universities (*see also* Community Colleges; University of North Carolina)—continued
Masters in school administration standards review ..... 276(7.28)
Minority recruitment to pharmacy schools pilot program ..... 276(10.59B)
Proprietary school licensing fee increase ..... 276(8.14)
Regional education networks feasibility study ..... 276(7.42)
SAT score use to enter teacher ed programs 419
Social work degree programs ..... 276(5.1s)
Columbia, Town of—satellite annexation cap removed ..... 433(9)
Columbus County
Bolton, Town of –*see* that heading
Hurricane recovery 1
Tabor City, Town of –*see* that heading
Commerce
Appeal of emergency cease and desist order for insurers 217
Appropriations—current operations ..... 276(2.1)
Banking/selling energy credits program 413
Bill Lee Act and Job Development Investment Grant Program study ..... 241(8)
Biotechnology Center –*see* that heading
Business Corporation Act revisions 268
Commercial drivers licenses conform to federal law 349
Competitive broadband encouragement 95
Complex business cases special judge assignment ..... 425(1.1)–(2)
Disposition of unclaimed/seized/confiscated firearm 287
Distributer license requirements Motor fuel importer ..... 435(9)
Dyed fuel distributors license requirements ..... 435(20)
Economic development public records laws clarification 429
Electric generating facilities not plumbing, heating or fire sprinkler contractors ..... 289(3)
Exempt certain insurers from risk-based capital provisions ..... 215(22)
Film company tax incentives ..... 276(39.1a)–(39.1g)
Foreign investment clarification for insurers ..... 215(10)
HMO dissolution plan approval ..... 215(20)
HMO statutory deposits ..... 215(18)
Hold harmless provisions for shipper negligence void 185
Holding period for business association equity interest escheats reduced 132
Identity theft protections 414
Industrial/commercial park interlocal agreement period increased 72
Inspection of motor carrier books ..... 435(5)
Insurance market conduct analysis and financial analysis file confidentiality 206
Insurance regulatory change ..... 276(40.1a)–(40.1b)

Commerce—continued
International home furnishings market funds ..... 345(26)
Job development investment grant program health insurance requirement ..... 241(5)
Licensed insurance company fees consolidation ..... 424(1.1)–(1.6)
Motor carriers
Fees increase ..... 276(44.1p)
Registration and identification markers ..... 435(6)–(8)
Motor fuel licenses ..... 435(10)–(11)
Motor fuel tax credit ..... 435(3)–(4)
Motor vehicle dealers
Fees increase ..... 276(44.1o)
Licensing technical corrections 99
Representative license display ..... 276(44.1r)
Motor vehicle registration fees increase ..... 276(44.1i)–(44.1n)
Mutual insurance company policyholder vote on guaranty capital retirement ..... 215(26)
Notification of CEO/President change for insurers ..... 215(6)
Oath of statutory compliance required of all insurers ..... 215(1)
Oversize/overweight vehicles 361
Public toilets in malls ..... 289(2)
Public utilities/cable TV system access to public rights-of-way 286
Reinsurance agreement encumbered assets change ..... 215(25)
Relocation of dealership without notification or hearing ..... 463(2)
Restrictions for persons soliciting on highways and streets in Burlington 30
Revocation of ABC permits 392
Rural Economic Development Center –*see* that heading
Satisfaction and cancellation of mortgages and deeds of trust 123
SEC hearing scheduling to consider employer business activity 122
Shipping document requirement for motor fuels ..... 435(16)–(17)
Statutory deposit clarification ..... 215(4)
Trade show transportation services funds ..... 276(28.2)
Trademark/logo use on special plates ..... 216(2)
Transporting alcoholic beverages without a permit 335
Umstead Act exemption for N.C. State dairy laboratory 20
Unauthorized insurers clarification 209
Uniform Residential Mortgage Satisfaction Act adoption 123
Unsound financial condition redefinition for insurers ..... 215(2)
Utilities regulatory charge ..... 276(40.2a)–(40.2c)
William S. Lee Quality Jobs and Business Expansion Act extension 241
Wine distribution agreements 340
Wine distribution/beer franchise agreements ..... 350(4)–(5)
Wine shipper permit fee repealed ..... 380(1)–(2)

Commerce—continued
Withholding of wages....453(16)–(19)
Workers compensation self-insurance group dissolution approval....215(15)
Written estimate requirement for motor vehicle repair.... 304
Commerce, Department of
Advanced Vehicular Research Center....276(13.8Aa)–(13.8Af)
Alternative funding for Industrial Commission study....276(13.6A)
Appropriations
Advanced Vehicular Research Center....276(13.8Aa)–(13.8Af)
Councils of Government.... 276(13.2a)–(13.2e)
International home furnishings market....345(26)
Oregon Inlet funds do not revert....276(13.1b)
Regional economic development commissions....276(13.6C)
Roanoke Rapids music/entertainment complex....276(13.6B)
Tourism promotion grants.... 276(13.3a)–(13.3c)
Wanchese Seafood Industrial Park do not revert....276(13.1a)
Assignment of tier designations....241(4), (6)
Bill Lee Act and Job Development Investment Grant Program study....241(8)
Economic development grant reporting....429(1.3)
Economic development public records laws clarification.... 429
Grape Growers Council transferred from Agriculture Department.... 380(4a)–(4d)
Industrial Development Fund use for transportation infrastructure....276(13.5)
SBIR/STTR Incentive Program guidelines....276(13.14b)
Secretary's salary....276(29.2)
Commissions, Committees, Councils and Boards (*see also* Appointments)
ABC Boards (local) –*see* that heading
Acupuncture Licensing Board –*see* that heading
Agricultural Development and Farmland Preservation Trust Fund Advisory Committee –*see* that heading
Agriculture, Board of –*see* that heading
Alarm Systems Licensing Board –*see* that heading
Alcoholic Beverage Control Boards (local) –*see* that heading
Alcoholic Beverage Control Commission –*see* that heading
Appraisal Board –*see* that heading
Athletic Trainer Examiners, Board of –*see* that heading
Auctioneers Commission –*see* that heading
Banking Commission, State –*see* that heading
Building Commission, State –*see* that heading
Business Committee for Education, Inc. –*see* that heading
Capital Facilities Finance Agency Board of Directors –*see* that heading
Cemetery Commission –*see* that heading
Center for Nursing, Board of Directors –*see* that heading
Center for the Advancement of Teaching, Board of Trustees –*see* that heading

Commissions, Committees, Councils and Boards (*see also* Appointments)—continued
Child Care Commission –*see* that heading
Chiropractic Examiners, State Board of –*see* that heading
Clean Water Management Trust Fund
Board of Trustees –*see* that heading
Code Officials Qualification Board –*see* that heading
Community Colleges, State Board of –*see* that heading
Coordination of Children's Services
Study Commission –*see* that heading
Corrections, Crime Control, and Juvenile Justice
Oversight Committee, Joint Legislative –*see* that heading
Cosmetic Art Examiners, State Board of –*see* that heading
Councils of Government (Regional) –*see* that heading
Crime Commission, Governor's –*see* that heading
Crime Victims Compensation Commission –*see* that heading
Criminal Justice Education and Training
Standards Commission –*see* that heading
Criminal Justice Information Network
Governing Board –*see* that heading
Dental Examiners, State Board of –*see* that heading
Dietetics/Nutrition, Board of –*see* that heading
Disciplinary Hearing Commission
of the State Bar –*see* that heading
Dispute Resolution Commission –*see* that heading
Domestic Violence Commission –*see* that heading
Domestic Violence, Joint Legislative
Committee on –*see* that heading
Dorothea Dix Hospital Property Study
Commission –*see* that heading
Early Childhood Vision Care, Governor's
Commission on –*see* that heading
Eastern Region Development Commission –*see* that heading
Economic Development Oversight Committee,
Joint Legislative –*see* that heading
Economic Investment Committee –*see* that heading
Edenton Historical Commission –*see* that heading
Education, Boards of (local) –*see* that heading
Education Commission of the States –*see* that heading
Education, State Board of –*see* that heading
Elections, Boards of (local) –*see* that heading
Elections, State Board of –*see* that heading
Electrolysis Examiners, Board of –*see* that heading
Electronic Recording Council –*see* that heading
Emergency Medical Services Advisory Council –*see* that heading
Employee Hospital and Medical Benefits,
Committee on –*see* that heading
Employment Security Commission –*see* that heading

Commissions, Committees, Councils and Boards (*see also* Appointments)—continued
Energy Policy Council, State –*see* that heading
Engineers and Surveyors, State Board of Examiners for –*see* that heading
Environmental Management Commission –*see* that heading
Fee-Based Practicing Pastoral Counselors, State Board of Examiners of –*see* that heading
Fire and Rescue Commission, State –*see* that heading
Funeral Service, North Carolina Board of –*see* that heading
General Contractors, North Carolina Licensing Board for –*see* that heading
Global Climate Change, Legislative Commission on –*see* that heading
Global TransPark Development Commission – *see* Eastern Region Development Commission
Governmental Operations, Joint Legislative Commission on –*see* that heading
Grape Growers Council –*see* that heading
Health and Wellness Trust Fund Commission –*see* that heading
Health Insurance Innovations Commission –*see* that heading
Health Services, Commission For –*see* that heading
Heart Disease and Stoke Prevention Task Force, Justus-Warren –*see* that heading
Home Inspector Licensure Board –*see* that heading
Housing Finance Agency Board, of Directors –*see* that heading
Housing Partnership –*see* that heading
Human Relations Commission –*see* that heading
Indian Affairs, State Commission of –*see* that heading
Interagency Council for Coordinating Homeless Programs –*see* that heading
Interpreter and Transliterator Licensing Board –*see* that heading
Interstate Commission for Juveniles –*see* that heading
Interstate Insurance Product Regulation Commission –*see* that heading
Interstate Juvenile Supervision, State Council for –*see* that heading
Judicial Council, State –*see* that heading
Justus-Warren Heart Disease and Stroke Prevention Task Force –*see* Heart Disease and Stoke Prevention Task Force, Justus-Warren
Juvenile Justice Advisory Council –*see* that heading
Legislative Research Commission –*see* that heading
License to Give Trust Fund Commission –*see* that heading
Local Government Commission –*see* that heading
Local Health Department Accreditation Board –*see* that heading
Locksmith Licensing Board –*see* that heading

Commissions, Committees, Councils and Boards (*see also* Appointments)—continued
Lottery Commission, State –*see* that heading
Manufactured Housing Board –*see* that heading
Marine Fisheries Commission –*see* that heading
Massage and Bodywork Therapy, Board of –*see* that heading
Medical Board –*see* that heading
Medical Care Commission –*see* that heading
Mental Health, Developmental Disabilities, and Substance Abuse Services, Legislative Oversight Committee on –*see* that heading
Mental Health, Developmental Disabilities, and Substance Abuse Services, Commission For –*see* that heading
Methamphetamine Abuse, Legislative Commission on –*see* that heading
Metropolitan planning organization representation on regional transportation authority boards..... 322
Motor Vehicle Reinsurance Facility, Board of Governors –*see* that heading
Museum of Art Board of Trustees –*see* that heading
Natural Heritage Trust, Fund Board of Trustees –*see* that heading
North Carolina Railroad Board of Directors –*see* that heading
Northeastern North Carolina Regional Economic Development Commission –*see* that heading
Nursing, Board of –*see* that heading
Nursing Scholars Commission –*see* that heading
Occupational Safety and Health Review Commission –*see* that heading
Occupational Therapy, Board of –*see* that heading
Partnership For Children, Inc., Board of Directors –*see* that heading
Perfusionist Advisory Committee –*see* that heading
Persons With Disabilities, Governor's Advocacy Council For –*see* that heading
Petroleum Underground Storage Tank Funds Council –*see* that heading
Pharmacy, Board of –*see* that heading
Plumbing, Heating and Fire Sprinkler Contractors, Board of Examiners Of –*see* that heading
Ports Authority, Board of State –*see* that heading
Post-Release Supervision and Parole Commission –*see* that heading
Private Protective Services Board –*see* that heading
Professional Teaching Standards Commission –*see* that heading
Property Tax Commission –*see* that heading
Public Employee Deferred Compensation Plan, Board of Trustees –*see* that heading
Public Health Authority Boards (local) –*see* that heading

Commissions, Committees, Councils and Boards (*see also* Appointments)—continued
Public Telecommunications, Agency For, Board of Directors –*see* that heading
Public Television, UNC Center For, Board of Trustees –*see* that heading
Real Estate Commission –*see* that heading
Recreational Therapy Licensure, Board of –*see* that heading
Research Triangle Regional Commission –*see* that heading
Revenue Laws Study Committee –*see* that heading
Roanoke Island Commission –*see* that heading
Roanoke River Basin Advisory Committee– *see* that heading
Rules Review Commission –*see* that heading
Safety and Health Review Board –*see* Occupational Safety and Health Review Board
Saltwater Fishing Fund Board of Trustees –*see* that heading
Sanitarian Examiners, State Board of –*see* that heading
School of Science and Mathematics, Board of Trustees –*see* University of North Carolina
Science and Technology, Board of –*see* that heading
Seafood and Aquaculture, Joint Legislative Commission on –*see* that heading
Sentencing and Policy Advisory Commission –*see* that heading
Sheriff's Education and Training Standards Commission –*see* that heading
Small Employer Health Insurance Pool Board –*see* that heading
Social Services Commission –*see* that heading
Social Work Certification and Licensure Board –*see* that heading
Soil Scientists, Board For Licensing Of –*see* that heading
Southeastern North Carolina Regional Economic Development Commission –*see* that heading
Southern Dairy Compact Commission –*see* that heading
State Infrastructure Council –*see* that heading
State Personnel Commission –*see* that heading
State Property, Commission on –*see* that heading
Substance Abuse Professional Practice Board –*see* that heading
Substance Abuse Professionals Certification Board –*see* Substance Abuse Professional Practice Board
Teacher Academy, Board of Trustees –*see* that heading
Teachers' and State Employees' Comprehensive Major Medical Plan, Board of Trustees –*see* that heading
Teachers' and State Employees' Retirement System, Board of Trustees –*see* that heading
Teaching Fellows Commission –*see* that heading

Commissions, Committees, Councils and Boards (*see also* Appointments)—continued
Therapeutic Recreation Certification, State Board of –*see* Recreational Therapy Licensure, Board of
Transportation Oversight Committee, Joint Legislative –*see* that heading
Tryon Palace Commission –*see* that heading
Turnpike Authority –*see* that heading
UNC Board of Governors –*see* that heading
Utilities Commission –*see* that heading
Virginia-North Carolina Interstate High-Speed Rail Compact Commission –*see* that heading
Water Infrastructure Commission, State –*see* that heading
Well Contractors Certification Commission –*see* that heading
Western North Carolina Regional Economic Development Commission –*see* that heading
Wildlife Resources Commission –*see* that heading
Wireless 911 Board –*see* that heading
Workers' Compensation Benefits, Study Committee on –*see* that heading
Yadkin/Pee Dee River Basin Advisory Commission –*see* that heading
Committees—*see* Commissions, Committees, Councils and Boards
Community Colleges
Capital funds ..... 276(8.12)
Capital improvement project bid process ..... 370(1)–(2)
Carryforward for economically disadvantaged counties ..... 276(8.10a)–(8.10e)
College Information System Project funds ..... 276(8.1a)–(8.1c)
Customized Industry Training Program created ..... 276(8.4a)–(8.4d)
Defense Technology Innovation Center funds ..... 276(8.11); 345(10)
Education program auditing function for State Board ..... 276(8.6)
Enrollment of gifted youths ..... 77(2)–(3)
Faculty and professional staff salaries ..... 276(8.3a)–(8.3g)
Ferry boat operator training feasibility study ..... 276(8.7a)–(8.7b)
Food programs enhanced nutrition ..... 276(9.28a)–(9.28b)
Gaston College
Center for Applied Textile Technology moved from CC System Office 103
Higher education strategy study extended ..... 276(9.18)
In-state tuition for retired military personnel and dependents ..... 445(7)
Massage and bodywork therapy programs exempt from licensure ..... 276(8.15a)
Multicampus funds adequacy ..... 276(8.5)
Regional education networks feasibility study ..... 276(7.42)
Trade Jobs for Success initiative reporting ..... 276(13.4Aa)–(13.4Ab)

Community Colleges—continued
Training and reemployment contribution by employers sunset extended ..... 276(8.8a)–(8.8b)
Tuition free courses for early college and middle college program students 193
Tuition waiver for certain wards of the State ..... 276(9.30a)–(9.30b)
UNC-NCCCS 2 + 2 E-Learning Initiative funds use ..... 276(9.5)
UNC-NCCCS joint teacher education and recruitment initiative ..... 276(9.3a)–(9.3c)
Use of facilities by private companies 247
Western Piedmont Community College
Personnel use for economic development activities 63
Wine tasting permits for viticulture/enology programs ..... 350(3a)–(3b)
Workforce development programs ..... 276(8.4a)–(8.4d)
Community Colleges, State Board of
Customized Industry Training Program may use New and Expanding Industry Training Program funds ..... 276(8.4c)
Education program auditing function ..... 276(8.6)
Ferry boat operator training feasibility study ..... 276(8.7a)–(8.7b)
Future Teachers of North Carolina Scholarship Loan Fund ..... 276(9.11a)–(9.11b)
High school innovation flexibility ..... 276(7.33a)–(7.33b)
Higher education strategy study extended ..... 276(9.18)
Lateral entry teacher certification training programs ..... 198(2)–(4)
Learn and earn high school program evaluation ..... 276(7.32d)
Need-based scholarship loan administration changes 40
Proprietary school licensing fee increase ..... 276(8.14)
Tuition waiver exchange program study ..... 276(9.25b)
Community Colleges System Office
Appropriations
College Information System Project ..... 276(8.1a)–(8.1c)
Continuation budget ..... 201(3)
Current operations ..... 276(2.1)
Defense Technology Innovation Center funds ..... 345(10)
Center for Applied Textile Technology moved to Gaston College 103
Customized Industry Training Program created ..... 276(8.4a)–(8.4d)
Equipment carryforward ..... 276(8.2a)–(8.2b)
Lead agency for workforce development and adult education ..... 77(1)
Medication aides study ..... 276(10.40Da)–(10.40Df)
North Carolina Infrastructure Program contracts with other State agencies ..... 276(13.12c)
Personnel salaries ..... 276(29.11)
Community Development Initiative, Inc.--housing programs and assistance funds ..... 1(5.1h)
Compacts
Interstate Compact for Juveniles 194
Interstate Insurance Product Regulation Compact ..... 183(1)

Computers–*see* Information Technology
Conference of Clerks of Superior Court—established 100
Confidentiality—*see* Privacy
Conservation
Alcoholic beverage container recycling by some permit holders ..... 348(1)–(2)
Coastal Conservation Association special plate ..... 216(3)–(7)
Conservation easements stewardship study ..... 276(6.22)
Disposal of certain recyclable containers prohibited ..... 348(3)
Farmland conservation easements 390
Land use and conservation easement funds for military base adjacent land ..... 445(1A.2)
NC Trout Unlimited special plate ..... 216(1), (3)–(7)
North Carolina Wildlife Habitat Foundation special plate ..... 216(1)
Plant conservation program funds ..... 276(11.3)
State motor vehicle fleet alternative fuel, synthetic lubricant, efficient vehicle plans ..... 276(19.5a)–(19.5c)
Consolidated Judicial Retirement System—*see* Retirement
Constitution, North Carolina
Escheat Fund investment program for benefit of needy higher education students 252
General Assembly resolution of contested Council of State elections procedures 3
Construction
Building permit prohibition for those with delinquent taxes in certain counties ..... 433(3a)–(3b)
Capital improvement project bid process for small community colleges ..... 370(1)–(2)
Construction and design supervisory authority for UNC 300
Construction materials sales and use tax ..... 276(33.8)
Construction without appropriations for UNC 324
Design-build contract for fire station in Roanoke Rapids ..... 174(2a)–(2b)
Land-disturbing activity ground cover planting ..... 443(2)
Professional services reverse auction study ..... 370(3)
Roanoke Rapids music/entertainment complex funds ..... 276(13.6B)
Strengthen building permit issuance requirements ..... 276(21.2)
Consumer Credit
Consumer credit sale definition 338
Debt adjusters/adjustment changes 408
Identity theft protections 414
Consumer Protection
Debt adjusters/adjustment changes 408
Escrow and trust accounts for manufactured home buyer deposits 451
Home Care Clients' Bill of Rights ..... 276(10.40An)
Identity theft protections 414
Maximum weight for vehicles subject to Warranties Act ..... 436(1)

Consumer Protection—continued
Mental health consumer advocacy program contingent on appropriations ..... 276(10.27)
Motor vehicle repair act clarification ..... 463(1)
Motor vehicle warranties consumer repurchase request ..... 436(2)
Protection from business closings 412
Written estimate requirement for motor vehicle repair 304
Contracts and Purchases
Bidding exemption for Roanoke Rapids ..... 174(3a)–(3c)
Capital improvement project bid process for small community colleges ..... 370(1)–(2)
Center for Death Penalty Litigation training for indigent defense ..... 276(14.8)
Certification of voting systems ..... 323(1)
Construction and design supervisory authority for UNC 300
Design-build contract for fire station in Roanoke Rapids ..... 174(2a)–(2b)
Early Childhood Education and Development Initiatives competitive bid practices ..... 276(10.64b)
Energy Committed to Offenders contract ..... 276(17.17A)
Herbert C. Bonner Bridge replacement ..... 382(3)
Historically underutilized business certification 270
Information technology procurement by UNC ..... 276(9.8)
Inmate legal assistance contract with Prisoner Legal Services ..... 276(14.9b)
Involvement of historically underutilized businesses in hurricane recovery ..... 1(5.8)
Jackson County Airport hanger construction contract moratorium 203
Lease purchase and installment contracts
Activity monitoring ..... 276(6.17a)–(6.17b)
Forestry equipment ..... 276(12.6)
Local government property electronic purchase and sale 227
Lottery game retailers ..... 276(31.1l)–(31.1o)
Lottery vendors ..... 276(31.1p)–(31.1q)
Multiyear information technology infrastructure maintenance contracts authorized ..... 276(20A.1a)–(20A.1c)
No funds for leased equipment that no longer exists ..... 276(6.27)
North Carolina Infrastructure Program contracts with other State agencies ..... 276(13.12c)
Percent increase added to non-resident bids ..... 213(1)
Performance-based maintenance contracts for Transportation Dept. ..... 276(28.10)
Personal service contracts reports ..... 276(6.38)
Private pilot toll project ..... 275(4)
Purchase of alternative-fueled vehicles with energy credit program funds ..... 413(2)–(3)
Rape kit backlog reduction private entities ..... 276(15.7a)–(15.7c)
Resident bidder preference on State contracts 213

Contracts and Purchases—continued
School bus replacement ..... 276(7.17a)–(7.17b)
Service contract approval exemption for UNC 125
Sludge management contracts 176
University and community college food programs enhanced nutrition ..... 276(9.28a)–(9.28b)
Vendor disclosure of overseas work 169
Vendor overpayments deposits and disbursements ..... 276(25.1a)–(25.1e)
Volume purchase plans and single source procurement for Medicaid ..... 276(10.11i)
Voting system vendor requirements ..... 323(2)
Controlled Substances—*see* Narcotics; Pharmaceuticals ..... 345(17)
Controlled Substances Reporting Act ..... 276(10.36a)–(10.36c)
Coordination of Children's Services Study Commission—created ..... 276(10.25i)–(10.25m)
Cornelius, Town of—removal of mayor or commissioner for cause 188
Corporations, For-Profit (*see also* Commerce)
Amend articles of incorporation ..... 268(1), (13)–(15)
Annual filing and actuarial rate certification for insurance providers 412
Business Corporation Act revisions 268
Carolina Dispute Settlement Services mediation funds ..... 276(14.16)
Community college facilities use by private companies 247
Conflict of interest policy for State grant recipients ..... 276(6.9a)–(6.9c)
Corporations defined for campaign finance purposes ..... 430(10)
Directors/officers ..... 268 (6)–(8), (10), (12)
Employer-owned life insurance disclosure ..... 234(2)
Inspection rights ..... 268 (35)–(36)
Insurance company tax changes ..... 276(38.4a)–(38.4d)
Limited liability companies (LLC) ..... 268(50)–(51)
Use of extrinsic facts ..... 268 (47)–(49), (52)–(54)
Manufacturing fuel sales and use tax ..... 276(33.20)–(33.22)
Mergers ..... 268(18)–(19), (22)–(28)
Motor vehicle dealer franchise clarification 409
No tax debts for State grant recipients ..... 276(6.9a)–(6.9c)
Partnerships
Use of extrinsic facts ..... 268 (52)–(54), (56)–(58)
Recycling equipment sales and use tax ..... 276(33.20)–(33.22)
SBIR/STTR Incentive Program created ..... 276(13.14b)
Shareholder voting ..... 268(2)–(5), (2)–(9)
Sole proprietor exemption for large group coverage ..... 223(2a)–(2c)
Training and reemployment contribution by employers sunset extended ..... 276(8.8a)–(8.8b)
Unemployment benefits and rate changes 410
Use of extrinsic facts ..... 268 (16)–(17), (29)–(30)

Corporations, For-Profit (*see also* Commerce)—continued
Women-in-Action for the Prevention of Violence and Its Causes mediation funds ..... 276(14.16)
Workers' compensation self-insurance security system 400
Corporations, Non-Profit (*see also* Charitable Contributions)
ALS Association Catfish Hunter Chapter funds ..... 276(10.10B)
Annual filing and actuarial rate certification for insurance providers 412
Business Corporation Act revisions 268
Charitable solicitations violations position in Secretary of State's office ..... 276(23.1)
Conflict of interest policy for State grant recipients ..... 276(6.9a)–(6.9c)
Corporations defined for campaign finance purposes ..... 430(10)
Establishment of private nonprofit corporations to support UNC ..... 276(9.22)
Harriet's House annual report ..... 276(17.22a)
Homeowners association homeowner protections 422
Merger of hospital authorities and/or charitable/ religious hospital 449
Mergers ..... 268(39)–(42), (44)–(46)
No tax debts for State grant recipients ..... 276(6.9a)–(6.9c)
Reporting requirements ..... 276(13.9a)–(13.9b)
Summit House annual report ..... 276(17.22b)
Use of extrinsic facts 268 (39)
Women at Risk annual report ..... 276(17.22c)
Correction, Department of
Appropriations
Community work crews ..... 276(17.11b)
Computer/data processing services ..... 276(17.10)
Current operations ..... 276(2.1)
Matching funds to receive federal grants ..... 276(17.9)
Medium custody road crew compensation ..... 276(17.11a)
Operational funds use limited ..... 276(17.8)
Cleveland Correctional Center minimum security conversion study ..... 276(17.18)
Closed correctional facilities use ..... 276(17.5)
Community work crews ..... 276(17.11b)
Confinement of terminally ill/disabled inmates ..... 276(17.13)
Convert contracted medical positions ..... 276(17.7a)–(17.7b)
Correction enterprises long-range planning ..... 276(17.16a)
Criminal Justice Partnership Program ..... 276(17.23a)–(17.23i)
Division of Community Corrections
Community Service Work Program integration into Div. of Community Corrections ..... 276(17.21)
Domestic violence offender tracking study ..... 356(2)
Education personnel salary supplements ..... 276(29.19c)
Energy Committed to Offenders contract ..... 276(17.17A)

Correction, Department of—continued
Federal grant reporting ....276(17.1)
Holiday pay for correction staff....276(17.3)
Inmate custody and classification system review....276(17.12a)–(17.12b)
Inmate health care cost containment study....276(17.15a)–(17.15d)
Inmate legal assistance responsibility transferred to Office of Indigent Defense Services ....276(14.9a)–(14.9d)
Medical liability coverage ....276(10.7a)–(10.7c)
Mutual Agreement Parole Program....276(17.27)
No payment of special condition costs by defendant ....276(17.29)
Probation/parole officer workload study ....276(17.20b)–(17.20c)
Reimburse counties for housing State prisoners....276(17.2)
Residential substance abuse treatment bed capacity increase ....276(17.30)
Secretary's salary ....276(29.2)
Security staffing formulas....276(17.4a)–(17.4c)
Seized and forfeited property use ....276(15.1a)–(15.1c)
Umstead Hospital laundry replacement....276(17.16b)
Unit management staffing study....276(17.17)
Correctional Group Homes and Half-Way Houses—*see* Correctional Institutions
Correctional Institutions
Alternatives to juvenile commitment ....276(16.11a)–(16.11c)
Cleveland Correctional Center minimum security conversion study....276(17.18)
Closed facilities use ....276(17.5)
Community work crews....276(17.11b)
Confinement of terminally ill/disabled inmates ....276(17.13)
Conveyance of property for a prison by North Wilkesboro 258
Correction enterprises long-range planning ....276(17.16a)
Custody and classification system review ....276(17.12a)–(17.12b)
Energy Committed to Offenders contract....276(17.17A)
Foothills Regional Airport Authority property conveyance 171
Harriet's House annual report ....276(17.22a)
Health care cost containment study ....276(17.15a)–(17.15d)
Holiday pay for correction staff....276(17.3)
Inmate costs ....276(17.6a)–(17.6c)
Inmates eligible for parole report ....276(17.24)
Inspection and review of prisons constructed through lease-purchase agreements 98
Juvenile detention centers study ....276(16.9)
Labor contracts and community work crews....276(17.14)
Law enforcement officers', firemen's, rescue squad workers', and civil air patrol member's death benefit extended.... 376
Legal assistance responsibility ....276(14.9a)–(14.9d)
Medium custody road crew compensation ....276(17.11a)

Correctional Institutions—continued
Prohibit smoking ... 372
Reimburse counties for housing State prisoners ... 276(17.2)
Residential substance abuse treatment bed capacity increase ... 276(17.30)
Security staffing formulas ... 276(17.4a)–(17.4c)
Summit House annual report ... 276(17.22b)
Treatment staffing model at youth development centers ... 276(16.6a)–(16.6b)
Umstead Hospital laundry replacement ... 276(17.16b)
Unit management staffing study ... 276(17.17)
Women at Risk annual report ... 276(17.22c)
Youth development centers capital projects progress reports ... 276(16.7)
Corrections, Crime Control, and Juvenile Justice Oversight Committee, Joint Legislative—juvenile detention centers study ... 276(16.9)
Cosmetic Art Examiners, State Board of—appointments and membership ... 421(2.9)
Council of State
General Assembly resolution of contested Council of State elections procedures ... 3
Legislative branch lobbying ... 456(1)
Lobbying restrictions on members or agency heads ... 456(1)
Salaries ... 276(29.1b)
Councils of Government (regional)—may acquire real property ... 290
Counties (*see also* Planning and Zoning)
Administrative voter registration changes ... 428(3)
Assignment of tier designations ... 241(4), (6)
Board of adjustment ... 418(8)
Bonds
Bid deposit not mandatory ... 238(7)
Destruction of cancelled bonds ... 238(9)
Net interest calculation method ... 238(8)
Refunding process ... 238(3)
Building permit prohibition for those with delinquent taxes ... 433(3a)–(3b)
Child support program enhanced standards ... 276(10.43a)–(10.43b)
Clean water revolving loans and grants encumbered by real/personal property ... 238(11)
Closed correctional facilities use ... 276(17.5)
Comment period requirement for County Commissioner meetings ... 170(2)
Community college carryforward for economically disadvantaged counties ... 276(8.10a)–(8.10e)
Community mh,dd,sas delivery procedures ... 276(10.31)
Counties may Exercise some powers of municipality when no municipality primarily with its borders ... 433(10a)–(10c)
Criminal Justice Partnership Program ... 276(17.23a)–(17.23i)

Counties (*see also* Planning and Zoning)—continued
Criminal records checks for county government ... 358
Delinquent property tax collection procedure for certain counties ... 109
Development financing specific pledge of revenues ... 238(6)
Different voting systems in same precinct ... 428(2)
Early Childhood Education and Development Initiatives funds for child care subsidies ... 276(10.64f)–(10.64g)
Election of county commissioner according to general law in Beaufort County ... 263
Encumbering of real property by local government ... 238(4)
Enhanced voluntary agricultural districts ... 390
Exercise of municipal functions when no incorporated municipalities ... 35
Finance officer performance bond increase ... 238(2)
Forestry activity regulation clarification ... 447
General obligation bonds no split coupon bonds ... 238(7)
Industrial/commercial park interlocal agreement period increased ... 72
Juvenile Crime Prevention Councils
Alternatives to juvenile commitment ... 276(16.11a)–(16.11c)
Gang violence prevention ... 276(16.8a)–(16.8b)
Grant reporting and certification ... 276(16.2a)–(16.2b)
Local government property electronic purchase and sale ... 227
Medicaid cost share ... 276(10.13a)–(10.13b)
Medicaid fraud recovery incentives ... 276(10.11o)
Merger of hospital authorities and/or charitable/religious hospital ... 449
Motor vehicle registration renewal and property tax collection system ... 294
Municipal/county planning and land use statute modernization and simplification ... 426
Museums are special purpose project for bond issuance ... 238(10)
No recordation of deed without certificate of no delinquent taxes in certain counties ... 433(1a)–(2b)
Noxious aquatic weed control service district definition authority ... 440
Payment of taxes by offset ... 134
Planning board review ... 418(7)
Planning ordinances technical and clarifying changes ... 418
Planning protest petitions ... 418(5)–(6)
Preliminary plat approval ... 418(2)–(3)
Provisional voting clarifications ... 2
Public-private reimbursement agreements for infrastructure development ... 41
Reimburse counties for housing State prisoners ... 276(17.2)
Remove property from fire districts ... 281

Counties (*see also* Planning and Zoning)—continued
Secondary road improvements 404
Senior center outreach ..... 276(10.37a)–(10.37c); 345(21)
Service district boundary changes 136
Stream clearing programs ..... 441(1)–(2)
TANF FY2005-2007 State plan approved ..... 276(10.51a)–(10.51c)
Tourism promotion grants ..... 276(13.3a)–(13.3c)
Transfer of State-owned property between water and sewer districts ..... 127(1)
Unified development ordinance ..... 418(1)
Voting system purchasing ..... 323(3)
Water and sewer authority member per diem increase ..... 127(2)
Zoning amendment notice ..... 418(4)
County Commissioners—*see* Counties; Local Government
Courts
Access to public records that are trial preparation materials 332
Administrative Office of the Courts (AOC)
Administrative Officer's salary ..... 276(29.4a)
Assistant Administrative Officer's salary ..... 276(29.4a)
Domestic violence offender tracking study ..... 356(2)
Family court in district 10 feasibility study ..... 276(14.18)
Family court model study ..... 356(4)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Search warrants obtained by audio/video transmission 334
Adoption consent streamlining 166
Assessment of fees for local government crime lab 363
Civil procedure
Access to public records that are trial preparation materials 332
Action for failure to pay rent ..... 423(10)–(12)
Attorneys' fees awarded in actions enforcing planned community rules 214
Complex business cases special judge assignment ..... 425(1.1)–(2)
Counterclaim clarification ..... 423(9)
Distribution of unpaid residuals in class action litigation 420
General court of justice fee increases ..... 276(43.1a)–(43.1h)
Hearing of motions in Superior Court district 163
Inadmissibility of statements from mediation conferences ..... 167(1), (4)
Limit on property a judgement debtor can exempt from claims of creditor 401
Service and filing requirement clarification 138
Service of process by signature confirmation 221

Courts—continued
Clerks of Court
Assistant and deputy clerks of court salaries ....276(29.6)
Child support enforcement 389
Commissions allowed personal representatives 388
Conference of Clerks of Superior Court established 100
Deputy clerk of court position for Hyde County .... 345(30a)–(30b)
Expedite outcomes for child/family in welfare and appeals cases 398
Indigent defense technical corrections 250
Longevity pay .... 276(29.23B)
No copy fee for attorneys appointed to defend indigents 251
Salaries .... 276(29.5)
Superior court clerk may order mediation 67
Trial file copies for indigent's attorney 148
Uniform Trust Code revision 192
Court costs
Copy cost charges for appellate division reports .... 276(14.7)
Court fees and funds collection by electronic and online payment feasibility study .... 276(14.5)
General court of justice fee increases .... 276(43.1a)–(43.1h)
Indigent defense technical corrections 250
No payment of special condition probation costs by defendant .... 276(17.29)
Court custody order conversion to permanent custody order .... 320(4)
Court of Appeals
Chief Judge's salary .... 276(29.4a)
Copy cost charges for appellate division reports .... 276(14.7)
Judges' salaries .... 276(29.4a)
Criminal procedure
Bail for methamphetamine manufacturing cases .... 434(6)
Determination of aggravating factors (Blakely v. Washington) 145
Electronic surveillance orders 207
Expungement of records under certain circumstances 452
General court of justice fee increases .... 276(43.1a)–(43.1h)
Hearing to determine source of appearance bond money/property 375
Probation stayed during appeal 339
Search warrants obtained by audio/video transmission 334
Trial file copies for indigent's attorney provided by clerk 148
Determination of aggravating factors (Blakely v. Washington) 145

Courts—continued
District attorneys
Assistant district attorneys' salaries....276(29.4b)
Divide district 20 and 29....276(14.2l)–(14.2q)
Resource prosecutor longevity pay....276(29.23A)
District Court
Beginning term change for judges....425(3.1)–(3.2)
Chief Judge's salary....276(29.4a)
Child abuse/neglect responsible individuals list expunction....399
Divide district 20 and district 29....276(14.2f)–(14.2k); 345(27a)–(27c)
Hearing to determine source of appearance bond money/property....375
Inadmissibility of statements from mediation conferences....167(3)
Judges allowed to perform marriage ceremonies....56
Judges' salaries....276(29.4a)
Probation stayed during appeal....339
Drug treatment court funds....276(14.22); 345(29a)–(29b)
Evidence
Service and filing requirement clarification....138
Speed-measuring instrument accuracy testing....137
Expedite outcomes for child/family in welfare and appeals cases....398
Expunction of records on pardon of innocence....319
Fee for displaced homemaker fund....405(5)
Guardian ad litem restrictions....398
Involuntary committment affidavit filing....135
Judges
Add judgeships to Superior Court District 20B....276(14.2a)–(14.2e2)
Consolidated Judicial Retirement System –*see* Retirement
District Court Judges allowed to perform marriage ceremonies....56
Judicial Campaign Act changes....430(4)–(6)
Retirement –*see* that heading
Salaries....276(29.4a)
Special Superior Court judge for complex business cases....425(1.1)
Juries
Age exemption of 72....149
Liens on real property....229
Magistrates
Action for failure to pay rent....423(10)–(12)
Probation stayed during appeal....339
Salaries....276(29.7a)–(29.7b)
Name change in county where divorce granted....38

Courts—continued
Parenting coordinators in domestic child custody ... 228
Public defenders (*see also* Indigent Defense Services, Office of)
Assistant public defenders' salaries ... 276(29.4b)
Death penalty training funds for indigent defense ... 276(14.8)
Indigent defense technical corrections ... 250
Office established in 5th defender district ... 276(14.14a)–(14.14b); 345(50A)
Recouping costs for indigent legal services ... 254
Trial file copies for indigent's attorney provided by clerk ... 148
Wake County public defender funds ... 276(14.10)
Resolution of conflicting child custody orders ... 320(1)
Return of seized firearm in domestic violence case ... 423(2)–(3)
Search warrants obtained by audio/video transmission ... 334
Superior Court
Clerk may order mediation ... 67
Complex business case fee ... 425(1.2)
Hearing of motions in Superior Court district ... 163
Hearing to determine source of appearance bond money/property ... 375
Inadmissibility of statements from mediation conferences ... 167(1)
Judges' salaries ... 276(29.4a)
Realign districts 20A and 20B and add judgeships, and divide district 29 ... 276(14.2a)–(14.2e2)
Senior Resident Judge's salary ... 276(29.4a)
Special Superior Court judge for complex business cases ... 425(1.1)
Supreme Court
Associate Justice salaries ... 276(29.4a)
Chief Justice's salary ... 276(29.4a)
Regulation of mediators ... 167(2), (4)
Tax consequences when determining equitable distribution ... 353
Termination of jurisdiction over juvenile ... 320(2)
Uniform Trust Code revision ... 192
Cramerton, Town of—overgrown vegetation violators annual notice ... 45
Craven County—Airport Authority changes ... 14
Credit Unions—*see* Financial Institutions
Crime Commission, Governor's—gang violence prevention grant process ... 276(16.8a)–(16.8b)
Crime Control and Public Safety, Department of
Appropriations
Current operations ... 276(2.1); 345(1a)

Crime Control and Public Safety, Department of—continued
Appropriations—continued
Warren National Guard armory asbestos/lead abatement ..... 345(32)
Crisis housing assistance Fund modification for hurricane recovery ..... 1(5.1c)
Floodplain mapping and inclusion of landslide vulnerability data ..... 1(6)
Fore-hire motor carrier safety amendment 64
Oversize/overweight vehicles 361
Reports –*see* that heading
Secretary's salary ..... 276(29.2)
Seized and forfeited property use ..... 276(15.1a)–(15.1c)
Tarheel Challenge Program annual evaluation ..... 276(18.1)
Crime Victims Compensation Commission—appointments and membership ..... 421(2.10)
Crimes (*see also* Motor Vehicle Violations and Infractions)
Aiding/abetting unlawful absence from school 318
Animal shelter deposit for care of dog fighting animals 383
Assault on an assistance animal 184
Assault or injury to a social worker 101
Baby-sitting service prohibited by sex offender or with sex offender on premises ..... 416(4)
Breach of school employee files confidentiality 321
Breaking/entering a place of worship 235
Cockfighting penalty increase 437
Computer-assisted remote hunting prohibited 62
Concealing a person's death 288
Deceptive use of banking identity/logo 162
Discharging weapon into occupied property increased penalty 461
DNA sample required for sexual battery offense 130
Domestic violence –*see* that heading
Electronic dog collar removal
Statewide 94
Washington County ..... 305(4)
Exploitation of elder or disabled adult 272
Failure to return hired motor vehicle 182
Falsification of highway inspection or test report 96
GPS system monitoring of domestic violence and sex offenders pilot program report ..... 276(17.19b)
Hunting on private property prohibited without written permission in certain counties 264
Identity theft ..... 414(2)–(3), (6)–(7), (9)
Indecent exposure 226
Internet sex predators 121

Crimes (*see also* Motor Vehicle Violations and Infractions)—continued
Leaving the scene of an accident by driver or passenger unlawful 460
Making false report of destructive device 311
Possession of lock-picking devices 352
Rape kit backlog reduction ..... 276(15.7a)–(15.7c)
Red and blue light restrictions 152
School internal controls review fraud incidents ..... 276(7.58)
Sex offender registration
Indecent exposure 226
Sexual battery offense 130
Speeding to elude arrest resulting in death 341
Termination of parental rights for parent who murdered the other parent 146
Theft from construction site increased penalty 208
Unlawful operation of audiovisual recording device 301
Use of laser device towards aircraft 329
Violation of protective order aggravating factor in capital sentencing study 295
Criminal Justice Education and Training Standards Commission
Appointments and membership ..... 421(1.11)–(2.11)
Speed-measuring instrument accuracy testing 137
Criminal Justice Information Network Governing Board
Appointments and membership ..... 421(1.12)–(2.12)
Statewide Automated Fingerprint Identification System replacement ..... 276(15.9a)–(15.9d)
Criminal Procedure—*see* Courts
Criminal Records—*see* Records
Cullowhee, Town of
Fire truck grant-in-aid ..... 276(9.29)
Western Carolina University –*see* University of North Carolina
Cultural Resources (*see also* Museums)
Carolinas Concert Assoc. grant in aid ..... 345(33)
Center for craft, creativity, and design funds ..... 276(9.37)
Charlotte Hawkins Brown State Historic Site capital funds ..... 276(30.6b)
Durham theater funds from occupancy tax ..... 233(4.2)
Guilford Battlefield Company special plate ..... 216(1)
Official state dances 218
Record checks for archaeological permit applicants 367
UNC-Pembroke North Carolina's historically American Indian university 153
Way-finding signs
Blue Ridge National Heritage Area ..... 276(28.14b)
Roanoke Voyages Corridor Commission ..... 276(28.14a)

Cultural Resources, Department of
Appropriations
Bethel Public Library ..... 345(34)
Carolinas Concert Assoc. grant in aid ..... 345(33)
Current operations ..... 276(2.1); 345(1a)
Division of Tryon Palace Historic Sites and Gardens
Tryon Palace Historic Sites and Gardens Fund created ..... 276(19A.1)
Record checks for archaeological permit applicants 367
Secretary's salary ..... 276(29.2)
Cumberland County
Carvers Creek added to State Parks System 26
Fayetteville, City of –*see* that heading
Hurricane recovery 1
Occupancy tax definitions change ..... 276(33.27)
Current Operations and Capital Improvements Appropriations Act 276
Currituck County
Airport property conveyed to county 18
Deer hunting changes 15
Sound water management study ..... 276(30.3a)

D

Dare County
Duck, Town of –*see* that heading
Herbert C. Bonner Bridge replacement ..... 275(6); 382(3)
Kill Devil Hills, Town of –*see* that heading
Kitty Hawk, Town of –*see* that heading
Manteo (Shallowbag) Bay channel maintenance funds ..... 276(30.3a)
Nags Head, Town of –*see* that heading
Occupancy tax definitions change ..... 276(33.28)
Oregon Inlet funds do not revert ..... 276(13.1b)
Sales and use tax for beach nourishment ..... 276(33.33)
Southern Shores, Town of –*see* that heading
Walters Slough maintenance dredging ..... 276(30.3a)
Wanchese Seafood Industrial Park do not revert ..... 276(13.1a)
Way-finding signs for Roanoke Voyages Corridor Commission ..... 276(28.14a)
Data Systems
Benign brain tumor cancer registries compliance 373
Child abuse/neglect responsible individuals list creation 399
Interstate/international law firm registry ..... 396(3)
Involuntary committment mental health facilities listing ..... 371(1)
Medication Aide Registry ..... 276(10.40Cc)
Police information network fee ..... 276(43.4a)–(43.4c)
Provider tracking database system for DHHS ..... 276(10.10A)
Statewide Automated Fingerprint Identification System replacement ..... 276(15.9a)–(15.9d)
Taxing jurisdictions database ..... 276(33.18)

Davidson County
Thomasville, City of –*see* that heading
Davie County
Early literacy project incorporation in More at Four study ..... 276(10.67g)
Force account limit increased for EMS station 32
Day Care
Adult day care services funds ..... 276(5.1a)
Child care
Allocation formula ..... 276(10.61a)–(10.61c)
Baby-sitting service prohibited by sex offender or with sex offender on premises ..... 416(4)
Child caring institutions overhead rates and reimbursements audit ..... 276(10.47a)
Child caring institutions standardized rates ..... 276(10.47b)–(10.47d)
Drop-in/short-term child care definition ..... 416(1)–(2)
Drop-in/short-term child care study ..... 416(3.1)
Facilities licensure strengthening 36
Funds matching requirement ..... 276(10.60)
Payroll deduction for services in DHHS ..... 276(10.8)
Revolving loan ..... 276(10.63)
Subsidies ..... 276(5.1a), (5.1l), (5.1m); 345(15)
Subsidy rates ..... 276(10.62a)–(10.62h)
Subsidy reimbursement system analysis ..... 276(10.66a)–(10.66b)
Deannexation–*see* Annexation
Death and Dying (*see also* Trusts and Estates)
Concealing a person's death 288
Confinement of terminally ill/disabled inmates ..... 276(17.13)
Health care power of attorney after death 351
Speeding to elude arrest resulting in death 341
Deborah Greenblatt Act 205
Debt-Local Government
Airport Authorities authorization to borrow money ..... 342(4)
Bid deposit not mandatory ..... 238(7)
Bond net interest calculation method ..... 238(8)
Bond refunding process ..... 238(3)
Destruction of cancelled bonds ..... 238(9)
Development financing specific pledge of revenues ..... 238(6)
Encumbering of real property by local government ..... 238(4)
Force account limit increased for EMS station in Davie County 32
General obligation bonds no split coupon bonds ..... 238(7)
Museums are special purpose project for bond issuance ..... 238(10)
Project development financing for tourism projects 407
Revenue bonds for water treatment facilities 249
Debtor and Creditor
Homeowners associations ..... 422(6), (16)
Liens on real property 229

Debtor and Creditor—continued
Limit on property a judgement debtor can exempt from claims of creditor 401
Medicaid estate recovery to include real property liens ..... 276(10.21Ca)–(10.21Cc); 345(16)
Set-off debt collection for certain entities 326
Debt-State Government
Aquarium expansion debt service ..... 276(12.10)
GARVEE bonds issuance 403
Nursing education and research center special indebtedness at Fayetteville State ..... 276(30.3A)
Proceeds of Global TransPark Authority property divestment for unmet obligations ..... 276(28.17)
Deeds–*see* Records
Deeds of Trust–*see* Loans
Dental Examiners, State Board of
Acquisition of real property ..... 366(3)
Third-party licensure testing ..... 366(1)–(2)
Dentistry
Anatomic pathology services markup disclosure 415
Dental coverage limits for Medicaid ..... 276(10.11g)
UNC Board of Governors dental scholarships ..... 276(9.9a)–(9.9b)
Deoxyribonucleic Acid (DNA)–*see* DNA (Deoxyribonucleic acid)
Dietetics/Nutrition, Board of—appointments and membership ..... 421(1.13)–(2.13)
Disabled Persons
Access to public facilities for service animals in training 450
Assault on an assistance animal 184
Children with disabilities funds ..... 276(7.12)
Comprehensive treatment services program for children continuation ..... 276(10.25a)–(10.25m)
Confinement of terminally ill/disabled inmates ..... 276(17.13)
Disabled sportsman program
Activities scheduling ..... 438(3)
Fees ..... 438(3)
Elderly, blind, disabled Medicaid coverage ..... 276(10.11e)
Exploitation of elder or disabled adult 272
Persons with disabilities language update 450
Retroactive Medicare eligibility decision ..... 223(6)
State Disability Income Plan amendment effective date change ..... 276(29.30Ba)–(29.30Bb)
Technical corrections and conforming changes 450
Ticket to Work Medicaid buy-in ..... 276(10.18a)–(10.18c)

Disasters and Emergencies (*see also* Emergency Management)
Disaster Relief Reserve Fund created....1(4)
Hurricane evacuation standard....275(5)
Hurricane Isabel emergency stream cleanup in Northeastern NC....276(30.3a)
Hurricane Recovery Act....1
Ocracoke School hurricane repair funds....345(9)
Stream restoration in Western NC....276(30.3a)
Vacation rental home agreements....292
Disciplinary Hearing Commission of the State Bar
Appeal of right from final order....237(1)
Appointments and membership....421(1.14)
Disclosure–*see* Notification
Diseases
Benign brain tumor cancer registries compliance....373
Certificates of need....325
Medicaid prior authorization for antihemophilic drugs exemption extended....83
National Multiple Sclerosis Society special plate....216(3)–(7)
Dispute Resolution Commission
Appointments and membership....421(2.14)
Regulation of mediators....167(2), (4)
Distance Education–*see* Electronic Government
Divorce (*see also* Equitable Distribution; Minors)
Child support enforcement....389
Child support program enhanced standards....276(10.43a)–(10.43b)
Court custody order conversion to permanent custody order....320(4)
Equitable distribution order of payment....180
Family court in district 10 feasibility study....276(14.18)
Family law arbitration amendments....187
Fee for displaced homemaker fund....405(5)
Name change in county where divorce granted....38
Parenting coordinators....228
Parenting coordinators in domestic child custody....228
Post-separation support....177
Resolution of conflicting child support orders....320(1)
Tax consequences when determining equitable distribution....353
DNA (Deoxyribonucleic acid) (*see also* Courts; Evidence)
Rape kit backlog reduction....276(15.7a)–(15.7c)
Sexual battery offense requires DNA sample....130
Testing and analysis costs study....276(15.8)
Domestic Animals–*see* Animals
Domestic Violence (*see also* Crimes)
Block grant funds....276(5.1a)
Concealed handgun permits for domestic violence victims....343

Domestic Violence (*see also* Crimes)—continued
Custody/visitation mediation when couple not married ..... 423(4)
GPS system monitoring of domestic violence and sex offenders pilot program report ..... 276(17.19b)
Protective orders ..... 423(1)
Return of seized firearm ..... 423(2)–(3)
Studies 356
Tenant rights under domestic violence statutes ..... 423(5)–(7)
Violation of protective order aggravating factor in capital sentencing study 295
Domestic Violence Commission
Advocacy programs study continuation ..... 276(19.1)
Appointments and membership ..... 421(1.15)–(2.15)
Domestic Violence, Joint Legislative Committee on—created ..... 356(1)
Dorothea Dix Hospital Property Study Commission—master plan extension 7
Dortches, Town of—deannexation 60
Drivers Licenses (*see also* Motor Vehicles)
Commercial licenses conform to federal law 349
Driving eligibility certificates ..... 276(7.18)
Fee increases ..... 276(44.1a)–(44.1h)
License to Give Trust Fund credit from fees ..... 276(44.1q)
Process and revocation order service for DMV by law enforcement 357
Public transportation operator positive drug test notification 156
Driving While Impaired (DWI) (*see also* Motor Vehicle Violations and Infractions)—alcohol and drug education traffic schools 312
Duck, Town of—unregistered all-terrain vehicle use ..... 305(1)
Duplin County
Kenansville, Town of –*see* that heading
Occupancy tax 53
Rose Hill, Town of –*see* that heading
Durham, City of
Durham theater funds from occupancy tax ..... 233(4.2)
Juvenile detention centers study ..... 276(16.9)
Museum of Life and Science grassroots science program grant-in-aid ..... 276(12.5a)
North Carolina Central University –*see* University of North Carolina
North Carolina School of Science and Mathematics –*see* University of North Carolina
Occupancy tax ..... 233(4.1)–(4.2)
Rocky Mount Children's Museum grassroots science program grant-in-aid ..... 276(12.5a)

Durham County
Durham, City of –*see* that heading
Mediation funds ..... 276(14.16)
North Carolina School of Science and Mathematics – *see* University of North Carolina
Public-private partnerships 172
Public-private reimbursement agreements for infrastructure development 41
DWI (Driving While Impaired)–*see* Driving While Impaired (DWI)

E

Early Childhood Education and Development Initiatives–*see* Health and Human Services, Department of (DHHS)
Early Childhood Vision Care, Governor's Commission on—created ..... 276(10.59Fd)
East Spencer, Town of—annexation 112
Eastern Region Development Commission
Appointments and membership ..... 364(1)
Appropriations ..... 276(13.6a)–(13.7b), (13.6C)
Powers amended 364
Renamed from Global TransPark Development Commission 364
Reports –*see* that heading
Economic Development
Airport property conveyed to Currituck County 18
Assignment of tier designations ..... 241(4), (6)
Bill Lee Act and Job Development Investment Grant Program study ..... 241(8)
Community development grants ..... 276(13.11e)
Councils of Government funds ..... 276(13.2a)–(13.2e)
Development financing districts ..... 238(1), (5), (12)
Film company tax incentives ..... 276(39.1a)–(39.1g); 345(47a)–(47e)
Industrial/commercial park interlocal agreement period increased 72
Job development investment grant program health insurance requirement ..... 241(5)
Manufacturing redevelopment districts 462
Microenterprise loan program funds ..... 276(13.11e)
Multi-jurisdictional industrial park exception ..... 406(1)
One North Carolina Fund economic development incentive grant programs ..... 276(13.6a)
Private sale of certain property in Farmville 29
Project development financing for tourism projects 407

Economic Development—continued
Public disclosure of economic development efforts study ....429(3)
Public records laws 429
Public-private partnerships in Durham County 172
Regional economic development commissions funds .... 276(13.6a)–(13.7b), (13.6C)
Tourism promotion grants .... 276(13.3a)–(13.3c)
Trends that reflect the impact of education on economic growth report by county ....345(25)
Use of Western Piedmont CC personnel 63
William S. Lee Quality Jobs and Business Expansion Act extension 241
Economic Development Oversight Committee, Joint Legislative
Bill Lee Act and Job Development Investment Grant Program study ....241(8)
Created ....241(7)
Professional services reverse auction study ....370(3)
Public disclosure of economic development efforts study ....429(3)
Economic Investment Committee—Job Development Investment Grant Program reporting ....429(2.1)
Eden, City of—occupancy tax .... 233(2)–(2c)
Edenton Historical Commission—appointments and membership .... 421(3.1a)–(3.1b)
Edgecombe County—Princeville flood control .... 276(30.3a)
Education
ABCs of public education funds .... 276(7.23a)–(7.23b)
Abstinence Until Marriage Education Program funds .... 276(5.1aa)
Academically gifted children funds ....276(7.13)
Actual/anticipated ADM discrepancies .... 276(7.19a)–(7.19b)
Administrators –*see* Teachers and Education Administrators
After-school programs/services for at-risk children .... 276(5.1q), (5.1z)
Aiding/abetting unlawful absence from school 318
Alternative learning program
Proposal requirement .... 446(2)–(4)
Standards ....446(1)
Alternative schools/at-risk student funds ....276(7.11)
Asthma/anaphylaxis medication policies 22
At-risk/alternative schools and accountability allotments accountability .... 276(7.61a)–(7.61b)
Breach of school employee files confidentiality 321
Buses
Passing a stopped school bus penalty increased 204
Replacement funds .... 276(7.17a)–(7.17b)
Routing of buses on public streets 151

Education—continued
Certified school personnel bonus ..... 276(7.5); 345(5)
Charter schools
Advisory committee funds ..... 276(7.20)
TSECMMP participation by certain charter schools 317
TSERS participation by certain charter schools 315; 317
Child nutrition standards for school meals 457
Children with disabilities funds ..... 276(7.12)
Content and exit standards for high school 458
Corrections Dept. education personnel salary supplements ..... 276(29.19c)
DHHS education personnel salary supplements ..... 276(29.19a)–(29.19b)
Disadvantaged students supplemental funding ..... 276(7.8a)–(7.8b)
Driving eligibility certificates ..... 276(7.18)
Dropout rate reduction methods identification 271
Duplicative school accreditation requirement repealed 155
Education administrators –*see* Teachers and Education Administrators
Education, Boards of (local) –*see* that heading
Education, State Board of –*see* that heading
English as a Second Language (ESL)
Guidelines for identifying and providing services to students ..... 276(7.9a)–(7.9b)
Enrollment of gifted youths in community colleges ..... 77(2)–(3)
E-Rate assistance and report ..... 276(7.43f)
Exit exam requirement eliminated for high school 458
Federal funding of HHS schools ..... 276(7.54a)–(7.54c)
Financial literacy curriculum ..... 276(7.59a)–(7.59c)
Governor's vision care program created ..... 276(10.59Fa)–(10.59Fh); 345(20a)–(20d)
High priority elementary school flexibility ..... 276(7.10)
High school credit policies for families of military personnel ..... 445(6)
Innovation flexibility for high schools ..... 276(7.33a)–(7.33b)
Internal controls review fraud incidents ..... 276(7.58)
International exchange teachers ..... 276(7.22a)–(7.22b)
Learn and earn high school program ..... 193; 276(7.32a)–(7.32d); 345(6a)–(6c)
LEP (Limited English Proficiency) –*see* English as a Second Language (ESL) this heading
Liability insurance for school social worker transporting students 355
Limited English Proficiency (LEP) –*see* English as a Second Language (ESL) this heading
Litigation reserve fund for salaries ..... 276(7.15)
Local school technology plan workshops ..... 276(7.43b)

Education—continued
Low-wealth counties supplemental funding ..... 276(7.6a)–(7.6j)
Make up instructional day flexibility in disaster areas 48
Masters in school administration standards review ..... 276(7.28)
Mentor teaching program
Effectiveness ..... 276(7.21d)
Funds for full time mentors ..... 276(7.21a)
Retention results ..... 276(7.21c)
Standards ..... 276(7.21b)
Noncertified school personnel salaries ..... 276(7.4a)–(7.4d)
Ocracoke School hurricane repair funds ..... 345(9)
Protective order notification to school ..... 423(1)
PSAT purchase law amendment 154
Public Instruction liaison with military bases feasibility ..... 445(5)
Refundable sales to State Public School Fund ..... 276(7.51a)–(7.51c); 345(7)
Regional education networks feasibility study ..... 276(7.42)
Residential schools
Conformed to public school accountability systems and improvement plans 195
Reporting ..... 276(10.52)
Resources needed for schools for 21st century learners study ..... 276(7.43e)
Salaries and benefits –*see* that heading
School employee salary study ..... 276(7.47)
School nurses
Funding ..... 276(10.53a)–(10.53b)
Funding initiative ..... 276(5.1cc)
Issues study ..... 276(7.38b)
School principals evaluation ..... 276(7.29)
School technology plans
Funding requirements ..... 276(7.43d)
Needs assistance ..... 276(7.43a)–(7.43f)
Review ..... 276(7.43c)
School transportation study ..... 276(7.57); 345(8)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
School-linked health centers study ..... 276(10.59Ga)–(10.59Gc)
Science and math nonresidential high schools ..... 276(7.39a)–(7.39c)
Seclusion and restraint use clarification ..... 205(2), (5)–(6)
Small school system supplemental funding ..... 276(7.7a)–(7.7f)
Small specialty high schools pilot program ..... 276(7.52a)–(7.52b)
Standardized tests minimized time ..... 276(7.37)
State school technology plan ..... 276(7.43a)–(7.43f)
Student accountability improvement funds ..... 276(7.14a)–(7.14b)
Student behavior management training ..... 205(3)–(4)

Education—continued
Student information system testing/implementation funds do not revert ..... 276(7.25a)–(7.25b)
Summer science and math enrichment programs ..... 276(7.39a)–(7.39c)
Teacher salaries –*see* Salaries And Benefits
Teachers –*see* Teachers and Education Administrators
Teachers and Education Administrators –*see* that heading
Trends that reflect the impact of education on economic growth report by county ..... 345(25)
Tuition free courses for early college and middle college program students 193
Vending products in schools standards 253
Virtual high school planning and funding ..... 276(7.41a)–(7.41e)
Education Assistance Authority
Appropriations
Future Teachers of North Carolina Scholarship Loan Fund ..... 276(9.11b)
Need-based financial aid programs funds ..... 276(9.6a)–(9.6d)
Need-based scholarship loan administration changes 40
Physical Education-Coaching Scholarship Loan Fund created ..... 276(9.31)
Prospective teacher scholarship loan fund transferred from Dept. of Public Instruction ..... 276(9.17a)–(9.17c)
School of Science and Mathematics tuition grant ..... 276(9.14a)–(9.14b)
Education, Boards of (local)
ABCs of public education funds ..... 276(7.23a)–(7.23b)
Academically gifted children funds ..... 276(7.13)
Actual/anticipated ADM discrepancies ..... 276(7.19a)–(7.19b)
Alternative learning program proposal requirement ..... 446(2)–(4)
Asthma/anaphylaxis medication policies 22
Bus replacement funds ..... 276(7.17a)–(7.17b)
Chatham County elections 309
Comment period requirement for meetings ..... 170(1)
Disadvantaged students supplemental funding ..... 276(7.8a)–(7.8b)
Election of members for Pamlico County ..... 305(6a)–(6b)
Elizabeth City Pasquotank elections and validation of actions ..... 305(9a)–(9c)
Guidelines for identifying and providing services to students ..... 276(7.9a)–(7.9b)
High priority elementary school flexibility ..... 276(7.10)
High school innovation flexibility ..... 276(7.33a)–(7.33b)
Internal controls review fraud incidents ..... 276(7.58)
International exchange teachers ..... 276(7.22a)–(7.22b)
LEA assistance program funds ..... 276(7.24)
Liability insurance for social worker transporting students 355
Local school technology plan workshops ..... 276(7.43b)

Education, Boards of (local)—continued
Low-wealth counties supplemental funding ..... 276(7.6a)–(7.6j), (7.60)
Make up instructional day flexibility in disaster areas 48
Medication aides ..... 276(10.40Df)
Mentor teaching program
Funds for full time mentors ..... 276(7.21a)
Retention results ..... 276(7.21c)
Nonpartisan elections for Franklin County Board of Education 80
Rockingham County elections 307
Routing of buses on public streets 151
School technology plans
Funding requirements ..... 276(7.43d)
Review ..... 276(7.43c)
Small school system supplemental funding ..... 276(7.7a)–(7.7f)
Student accountability improvement funds ..... 276(7.14a)–(7.14b)
Vacancy in Jones County 107
Vending products in schools standards 253
Education Cabinet
School nurse issues study ..... 276(7.38b)
Secretary of HHS added ..... 276(7.38a)
Education Commission of the States—appointments and membership ..... 421(1.16)
Education Oversight Committee, Joint Legislative
In-state teacher tuition benefit study ..... 276(9.35)
School employee salary study ..... 276(7.47)
Education, State Board of
Actual/anticipated ADM discrepancies ..... 276(7.19a)–(7.19b)
Administrator certification clarification 179
Alternative learning program standards ..... 446(1)
Appropriations
ABCs of public education ..... 276(7.23a)–(7.23b)
Abstinence Until Marriage Education Program ..... 276(5.1aa)
Academically gifted children funds ..... 276(7.13)
Alternative schools/at-risk students ..... 276(7.11)
Center for 21st Century Skills transfer funds to Office of the Governor ..... 276(7.39a)
Charter school advisory committee ..... 276(7.20)
Children with disabilities ..... 276(7.12)
Driving eligibility certificates ..... 276(7.18)
LEA assistance program ..... 276(7.24)
Litigation reserve fund for salaries ..... 276(7.15)
Replacement school buses ..... 276(7.17a)–(7.17b)
Student accountability improvement ..... 276(7.14a)–(7.14b)
Student information system testing/implementation funds do not revert ..... 276(7.25a)–(7.25b)
Teacher working conditions survey ..... 276(7.40a)–(7.40b)
Virtual high school planning and funding ..... 276(7.41d)

Education, State Board of—continued
At-risk/alternative schools and accountability allotments accountability ..... 276(7.61a)–(7.61b)
Child nutrition standards for school meals 457
Content standards and exit standards for high school 458
Driving eligibility certificates ..... 276(7.18)
Dropout rate reduction methods identification 271
Duplicative school accreditation requirement repealed 155
Exit exam requirement eliminated for high school 458
Financial literacy curriculum ..... 276(7.59a)–(7.59c)
Future Teachers of North Carolina Scholarship Loan Fund ..... 276(9.11a)–(9.11b)
Guidelines for identifying and providing services to students ..... 276(7.9a)–(7.9b)
High priority elementary school flexibility ..... 276(7.10)
High school credit policies for families of military personnel ..... 445(6)
Internal controls review fraud incidents ..... 276(7.58)
Learn and earn high school program ..... 276(7.32a)–(7.32d), (7.32d); 345(6a)–(6c)
Masters in school administration standards review ..... 276(7.28)
Mentor teaching program
Effectiveness ..... 276(7.21d)
Funds for full time mentors ..... 276(7.21a)
Standards ..... 276(7.21b)
Principals evaluation ..... 276(7.29)
Professional development program evaluation ..... 276(9.34a)–(9.34b)
PSAT purchase law amendment 154
Residential schools conformed to public school accountability systems and improvement plans 195
Resources needed for schools for 21st century learners study ..... 276(7.43e)
SAT score use to enter teacher ed programs 419
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Small specialty high schools pilot program ..... 276(7.52a)–(7.52b)
Standardized tests minimized time ..... 276(7.37)
Student behavior management training ..... 205(3)–(4)
Teacher planning time ..... 276(7.30)
Teacher working conditions survey ..... 276(7.40a)–(7.40b)
Technology plans funding requirements ..... 276(7.43d)
Educational Testing–*see* Testing
Elections
Administrative voter registration changes ..... 428(3)
Apply scope and opinion provisions to all campaign finance articles ..... 430(7)–(8)
Audit trail for money order campaign contributions ..... 430(1)–(2)
Automatic cancellation of old registration ..... 428(9)

Elections—continued
Canvass after general election ....428(11)
Certification of voting systems ....323(1)
Chatham County Board of Education 309
Corporations defined ....430(10)
Different voting systems in same precinct ....428(2)
Election of certain public officials according to general law in Beaufort County 263
Electioneering communications contributions reporting .... 430(9a)–(9d)
Electronic pollbook clarification ....428(12)
Elizabeth City Pasquotank Board of Education .... 305(9a)–(9c)
Filing fees ....428(8)
Food and beverage tax for Monroe 261
General Assembly resolution of contested Council of State elections procedures 3
General election candidate with most votes is winner ....428(13)
Help America Vote Act Election Fund
Generally ....323(7)
Training and voting systems purchase .... 276(23A.2a)–(23A.2d)
Judicial Campaign Act changes .... 430(4)–(6)
Malt beverage permit elections for cities with railroad terminus 336
Nonpartisan elections for Franklin County Board of Education 80
One-stop voting
Ballot counting procedures 159
Precinct transfers ....428(6)
Voter assistance rules ....428(5)
Voting on election day pilot program for Orange County 256
Payment of campaign expenses by any verifiable form ....430(3)
Precinct boundary program ....428(16)
Protest deadline change ....428(4)
Provisional voting clarifications 2
Public Campaign Financing Fund –*see* Funds and Accounts
Public confidence in elections 323
Recasting lost votes ....428(17)
Recounts ....323(6)
Rockingham Board of Education 307
Sample counts in all counties ....323(5)
Satellite voting centers in Orange County .... 305(4.1)–(4.2)
State Bar member surcharge for Public Campaign Fund .... 276(23A.1a)–(23A.1e)
Training of political committee treasurers ....430(10.1)
Use of runners ....428(1)
Voter registration data access ....428(10)
Voter verification pilot program ....323(9)

Elections—continued
Voting system
Purchasing ..... 323(1)–(3)
Vendor requirements ..... 323(2)
Elections, Boards of (local)
Canvass after general election ..... 428(11)
Code of ethics ..... 323(8)
Filing fees ..... 428(8)
One-stop voting
Ballot counting procedures 159
Precinct transfers ..... 428(6)
Voter assistance rules ..... 428(5)
Voting on election day pilot program for Orange County 256
Protest deadline change ..... 428(4)
Recasting lost votes ..... 428(17)
Satellite voting centers in Orange County ..... 305(4.1)–(4.2)
Voting system purchasing ..... 323(4)
Elections, State Board of
Appointments and membership ..... 276(23A.3)
Appropriations—current operations ..... 276(2.1)
Automatic cancellation of old registration ..... 428(9)
Certification of voting systems ..... 323(1)
Code of ethics recommendation ..... 323(8)
Different voting systems in same precinct ..... 428(2)
General Assembly resolution of contested Council of State elections procedures 3
Help America Vote Act Election Fund
Generally ..... 276(23A.2a)–(23A.2d)
Training and voting systems purchase use ..... 276(23A.2a)–(23A.2d)
Provisional voting clarifications 2
Recasting lost votes ..... 428(17)
Sample counts in all counties ..... 323(5)
State Bar member surcharge for Public Campaign Fund ..... 276(23A.1a)–(23A.1e)
Training of political committee treasurers ..... 430(10.1)
Voter verification pilot program ..... 323(9)
Electricity–*see* Utilities
Electrolysis Examiners, Board of—appointments and membership ..... 421(2.16)
Electronic Government
Court fees and funds collection by electronic and online payment feasibility study ..... 276(14.5)
Distance education study ..... 276(9.7)
Electronic funds transfer for those filing a motor fuel tax electronic return ..... 435(2)
Electronic monitoring system
Device fee ..... 276(43.2a)–(43.2b)
Report ..... 276(17.19a)

Electronic Government—continued
GPS system monitoring of domestic violence and sex offenders pilot program report ..... 276(17.19b)
Lobbying
Report filing ..... 456(4)
Reports and registration information availability ..... 456(1)
Local government property electronic purchase and sale 227
Online motor vehicle dealer registration enhancement ..... 276(28.22a)–(28.22b)
Penalties concerning electronic payment of property tax ..... 313(10)
Police information network fee ..... 276(43.4a)–(43.4c)
Real-time weigh-in-motion data sharing ..... 276(28.25a)–(28.25b)
Regional education networks feasibility study ..... 276(7.42)
Search warrants obtained by audio/video transmission 334
UNC-NCCCS 2 + 2 E-Learning Initiative funds use ..... 276(9.5)
Uniform Real Property Electronic Recording Act ..... 391(1)–(2)
Virtual high school planning and funding ..... 276(7.41a)–(7.41e)
Electronic Notary Act ..... 391(3)–(4)
Electronic Recording Council—created ..... 391(1)
Elementary Education–*see* Education
Elizabeth City, City of
Board of Education elections and validation of actions ..... 305(9a)–(9c)
Elizabeth City Science Center grassroots science program grant-in-aid ..... 276(12.5a); 345(23)
Elizabeth City State University –*see* University of North Carolina
Occupancy tax 16
Port Discover grassroots science program grant-in-aid ..... 345(23)
Satellite annexation cap removed 71
Tourism Development Authority 16
Elizabethtown, Town of—golf cart regulation ..... 11(1)
Emerald Isle, Town of—canal dredging fee 47
Emergency Management
Emergency services volunteer liability immunity 273
Flood control projects ..... 276(30.3a)
Floodplain mapping and inclusion of landslide vulnerability data ..... 1(6)
Forest Resources Division designated an emergency response agency 128
Make up instructional day flexibility in disaster areas 48
Princeville flood control ..... 276(30.3a)
Swan Quarter flood control dykes ..... 276(30.3a)
Emergency Medical Services–*see* Emergency Services
Emergency Medical Services Advisory Council—appointments and membership ..... 421(2.17)

Emergency Services
Anson County volunteer fire departments funds ..... 345(35)
Cap on amount charged by local government for 911 ..... 439(10)
Death benefits act definition ..... 276(29.30C)
Design-build contract for fire station in Roanoke Rapids ..... 174(2a)–(2b)
Emergency services volunteer liability immunity 273
Enhanced wireless 911 plan ..... 439(3)
Fire truck grant-in-aid ..... 276(9.29)
Firemen's and Rescue Squad Worker's Pension Fund –*see* Retirement
Force account limit increased for EMS station in Davie County 32
Forest Resources Division designated an emergency response agency 128
Law enforcement officers', firemen's, rescue squad workers', and civil air patrol member's death benefit extended 376
Radio Emergency Associated Communications Teams exempt from solicitation laws 230
Remove property from fire districts 281
Termination of membership in Firemen's and Rescue Squad Workers' Pension Fund 281
Union County volunteer fire departments funds ..... 345(35)
Volunteer Rescue/EMS Fund changes 283
Wireless 911 and emergency telephone system issues study ..... 439(11a)–(11b)
Wireless 911 Fund –*see* Funds and Accounts
Yielding to emergency vehicles "Move-over Law" 189
Eminent Domain (*see also* Annexation; Planning and Zoning)
Condemnation authority for Holly Springs 57
Consent required for condemnation by local government outside Northampton County 33
Enhanced voluntary agricultural districts ..... 390(14)
Employee Hospital and Medical Benefits, Committee on—optional health plans ..... 276(29.33a)–(29.33d)
Employment (*see also* Salaries and Benefits)
Baby-sitting service prohibited by sex offender or with sex offender on premises ..... 416(4)
Bill Lee Act and Job Development Investment Grant Program study ..... 241(8)
Community college workforce development programs ..... 276(8.4a)–(8.4d)
Community Colleges Office lead agency for workforce development and adult education ..... 77(1)
Criminal record checks–*see* Records
Customized Industry Training Program created ..... 276(8.4a)–(8.4d)
Employer-owned life insurance disclosure ..... 234(2)
Home protection pilot program and loan fund expansion ..... 276(20.2a)–(20.2f)

Employment (*see also* Salaries and Benefits)—continued
Job development investment grant program health insurance requirement ..... 241(5)
Learn and earn high school program ..... 276(7.32a)–(7.32d); 345(6a)–(6c)
Payroll deduction for employees' associations ..... 276(6.35)
Professional Employer Organization licensure 124
State employee fair minimum wage ..... 276(29.18a)–(29.18c)
Teacher assistants may work while completing student teaching 302
Ticket to Work Medicaid buy-in ..... 276(10.18a)–(10.18c)
Trade Jobs for Success initiative reporting ..... 276(13.4Aa)–(13.4Ab)
Training and reemployment contribution by employers sunset extended ..... 276(8.8a)–(8.8b)
Unemployment benefits and rate changes 410
Wage and Hour Act changes ..... 453(15)–(23)
Workers' compensation –*see* Insurance
Employment Security Commission
Appropriations ..... 276(13.4a)–(13.4b); 345(24)
Chair's salary ..... 276(29.3), (29.20Aa)–(29.20Ab); 345(41)
Hearing scheduling to consider employer business activity 122
Reports –*see* that heading
E-NC Authority
Appointments and membership ..... 421(1.17), (2.18)
Appropriations
Allocation from Rural Economic Development Center ..... 276(13.12f)
Commission membership change ..... 276(13.12g)
Regional education networks feasibility study ..... 276(7.42)
Energy Policy Council, State—oil overcharge funds for approved projects ..... 276(19.4b)
Engineers and Surveyors, State Board of Examiners for—land surveyor licensure requirements 296
English as a Second Language (ESL)–*see* Education
Entertainment Industry
Beer and wine sales at certain university and county facilities ..... 327(1)–(3)
Film company tax incentives ..... 276(39.1a)–(39.1g); 345(47a)–(47e)
Roanoke Rapids music/entertainment complex funds ..... 276(13.6B)
Unlawful operation of audiovisual recording device 301
Environment (*see also* Conservation; Wildlife)
Banking/selling energy credits program 413
Belhaven Harbor environmental improvements ..... 276(30.3a)
Cause of action filing under Sedimentation Pollution Control Act ..... 386(7.3)

Environment (*see also* Conservation; Wildlife)—continued
Coastal habitat protection plan implementation funds ..... 443(1)
Express DENR permit and certification reviews ..... 276(12.2a)–(12.2d)
Gasoline sulfur content requirements permanent 196
Global climate change study ..... 442(5)
Land-disturbing activity ground cover planting ..... 443(2)
Manufacturing redevelopment districts 462
Neuse River modeling/monitoring program reports amendment ..... 386(2.1), (2.3)
Nutrient control criteria and management strategy for drinking water supply reservoirs ..... 190(2b)–(3f)
Oyster habitat restoration ..... 276(30.3a)
Prohibited landfill items 362
Sedimentation control plan
30 Day filing requirement ..... 386(7.2)
Landowner's consent ..... 386(7.1)
Sedimentation education funds ..... 276(12.3)
Stream clearing programs ..... 441(1)–(2)
Technical corrections and conforming changes 386
Tree planting and removal ordinances authorized for Matthews ..... 305(5)
Water quality in drinking water supply reservoirs study ..... 190(2a)
Wetlands Restoration Program renamed Ecosystem Enhancement Program ..... 386(3.1)–(3.6)
Environment and Natural Resources, Department of (DENR)
Air Quality Compliance Advisory Panel renamed Small Business Environmental Advisory Panel ..... 386(8.1)–(8.2)
Animal waste management system inspection pilot program extended ..... 276(12.7a)–(12.7c)
Appropriations
Beaver damage control funds ..... 276(12.8)
Current operations ..... 276(2.1)
Division of Forest Resources
Forestland restoration and fire prevention activities ..... 1(5.1i)
Division of Forest Resources district 9 capital funds ..... 276(30.2)
Grassroots science program ..... 276(12.5a)–(12.5b)
Sedimentation education funds ..... 276(12.3)
Texfi site contamination cleanup and monitoring funds ..... 276(12.9)
Water resources development projects ..... 276(30.2); 345(44)
Division of Coastal Management
Salaries ..... 276(29.21)
Division of Forest Resources
Emergency response agency designation 128
Lease purchase/installment contracts for forestry equipment ..... 276(12.6)
Express permit and certification reviews ..... 276(12.2a)–(12.2d)
Federal drinking water act funds state match ..... 276(12.1)

Environment and Natural Resources, Department of (DENR)—continued
Floodplain mapping and inclusion of landslide vulnerability data ..... 1(6)
Grassroots science program ..... 276(12.5a)–(12.5b)
Green square project authorization 255
Lands added to State Parks System 26
Manufacturing redevelopment districts 462
Medical liability coverage ..... 276(10.7a)–(10.7c)
Mercury switch recovery 384
Phaseout of MTBE use in motor fuels regional approach ..... 93(2)–(4)
Preventive and protective flooding measures study ..... 1(7a)–(7c)
Secretary's salary ..... 276(29.2)
Small Business Environmental Advisory Panel name changed from Air Quality Compliance Advisory Panel ..... 386(8.1)–(8.2)
State Energy Office
Banking/selling energy credits program 413
Technical corrections and conforming changes ..... 386(1.2)–(1.9)
Underground storage tank clarifying and conforming changes 365
Wetlands Restoration Program renamed Ecosystem Enhancement Program ..... 386(3.1)–(3.6)
Environmental Management Commission
Appointments and membership ..... 421(1.18), (2.19)
Nutrient control criteria and management strategy for drinking water supply reservoirs ..... 190(2b)–(3f)
Protection for North shore of Fontana Lake 97
Water quality in drinking water supply reservoirs study ..... 190(2a)
Equitable Distribution–*see* Divorce
Erosion (*see also* Environment)
Cause of action filing under Sedimentation Pollution Control Act ..... 386(7.3)
Land-disturbing activity ground cover planting ..... 443(2)
Sedimentation control plans
30 Day filing requirement ..... 386(7.2)
Landowner's consent ..... 386(7.1)
Sedimentation education funds ..... 276(12.3)
Escheats–*see* Property
ESL (English as a Second Language)–*see* Education
Estates–*see* Trusts and Estates
Ethics
Hospital conflict of interest law ..... 70(1)
Referrals to provider agencies conflict of interest rules for Commission for mh,dd,sas ..... 276(10.33)
Wireless 911 Board ..... 439(2)
Zoning decision conflicts of interest ..... 426(5)
Evidence–*see* Courts
Explosives—making false report of destructive device 311
Extraterritoriality–*see* Planning and Zoning

F

Fairs and Exhibitions—animal exhibits permitting and sanitation requirements 191
Family Law Arbitration Act 187
Family Planning (*see also* Abortion)—Medicaid coverage of services ..... 276(10.11s)
Farmville, Town of—private sale of certain property 29
Fayetteville, City of
Fascinate-U grassroots science program grant-in-aid ..... 276(12.5a)
Fayetteville State University –*see* University of North Carolina
Texfi site contamination cleanup and monitoring funds ..... 276(12.9)
Fee-Based Practicing Pastoral Counselors, State Board of Examiners of—appointments and membership ..... 421(2.20)
Fees
Acupuncture licensure fees ..... 379(3)
Alcohol and drug education traffic school fees ..... 312(1)
Annual membership fee increase for State Bar ..... 237(2)
Attorneys' fees awarded in actions enforcing planned community rules 214
Campus Police Act 231
Canal dredging fee for certain cities 47; 90
Coastal recreational fishing licenses ..... 455(1.1)–(1.5)
Code officials examination fee ..... 289(1)
Complex business case fee ..... 425(1.2)
Court assessment of fees for local government crime lab 363
Court fees and funds collection by electronic and online payment feasibility study ..... 276(14.5)
Criminal records checks fee adjustment study ..... 276(15.5b)
Debt fee for taxpayer locator services and collection ..... 276(22.1a)–(22.1b)
Delinquent storm water fee collection procedure for certain counties ..... 441(3a)–(3b)
Disabled hunter program fees ..... 438(3)
Displaced homemaker fund ..... 405(5)
District bar late fee ..... 396(2)
Division of Facility Services fees ..... 276(41.2a)–(41.2k)
Drivers license fees increase ..... 276(44.1a)–(44.1h)
Electronic monitoring device fee ..... 276(43.2a)–(43.2b)
Excess overweight/oversize fees use ..... 276(28.5)
Executive branch lobbyist registration ..... 456(2)
General contractors increase ..... 381(1)–(3)
General court of justice fee increases ..... 276(43.1a)–(43.1h)
Homeowners associations ..... 422(1), (10)
Indigent defense attorney fees ..... 276(14.13)
Indigent defense technical corrections 250
Industrial Commission fees ..... 276(45.1a)–(45.1b)

Insurance regulatory charge ..... 276(40.1a)–(40.1b)
License to Give Trust Fund credit from fees ..... 276(44.1q)
Licensed insurance company fees consolidation ..... 424(1.1)–(1.6)
Lobbyist registration ..... 456(1)
Local medical examiner investigations 368
Medical Board fees increase ..... 402(5)–(6)
Mercury switch recovery 384
Mine safety and education programs fee ..... 276(42.2a)–(42.2b); 345(48a)–(48b)
Motor carrier fees increase ..... 276(44.1p)
Motor vehicle dealer fees increase ..... 276(44.1o)
Motor vehicle registration fees increase ..... 276(44.1i)–(44.1n)
Newborn screening fee ..... 276(41.1a)–(41.1b)
No copy fee for attorneys appointed to defend indigents 251
Notary public increase 328
Out-of-state attorney fees ..... 396(1)
Perfusionist licensure 267
Plumbing and heating contractor licensure 131
Police information network fee ..... 276(43.4a)–(43.4c)
Professional Employer Organizations ..... 124(2)
Proprietary school licensing fee increase ..... 276(8.14)
Recreational therapy licensure 378
Setting/raising pharmacy licensure fees ..... 402(2)–(3)
Split-case fee clarification ..... 380(3)
Statutory authority for State Bar to charge certain fees ..... 396(7)
Substance abuse professionals 431
Tax collection assistance fee ..... 276(22.6a)–(22.6b); 345(37)
Unified hunting and fishing licenses ..... 455(1.16)
Utilities regulatory charge ..... 276(40.2a)–(40.2c)
Wastewater Reserve and Drinking Water Reserve loans and grants ..... 454(3)
Wine shop permit ..... 350(2a)–(2c)
Wireless surcharges ..... 439(4)–(5)

Ferries—ferry boat operator training feasibility study ..... 276(8.7a)–(8.7b)

Financial Institutions

Affiliated trust agency account transfers and agency appointments 274
Deceptive use of banking identity/logo 162
Escrow and trust accounts for manufactured home buyer deposits 451
Green square project authorization 255
Investment of State/local funds in N.C. financial institutions 394
Out-of-state/foreign trust companies without presence in state 269
Technical corrections and conforming changes 269

Financial Services
Consumer credit sale definition ... 338
Debt adjusters/adjustment changes ... 408
Deceptive use of banking identity/logo ... 162
Insurance market conduct analysis and financial analysis file confidentiality ... 206
Limited loan officer licensure ... 316(1)–(5)
Microenterprise loan program funds ... 276(13.11e)
Money transmissions to locations outside US disclosure ... 104
Mortgage banker branch manager designation ... 316(6)
Motor vehicle captive finance ... 409(3)
Out-of-state/foreign trust companies without presence in state ... 269
Uniform Trust Code revision ... 192
Unitrust laws amended ... 244
Fines and Penalties
Action against mortgage lending licensee/applicant falsifying continuing education ... 316(7)
Boiler act changes ... 453(1)–(14)
Civil penalties for interpreters and transliterators ... 299(3)–(4)
Conflict of interest policy for State grant recipients ... 276(6.9b)
Cost recovery for investigation of violations of general contractors licensure ... 381(4)–(5)
Failure to obtain a motor fuel license ... 435(1)
Homeowners associations ... 422(4), (10), (14)
Hunting on registered lands increased fines in Vance County ... 31(4)
No tax debts for State grant recipients ... 276(6.9b)
Obstruction of boat ramp limited ... 164
Occupational Safety and Health Review Commission authority ... 133(8)
Oversize/overweight vehicles ... 361
Passing certain stopped buses penalty increased ... 204
Penalties concerning electronic payment of property tax ... 313(10)
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ... 276(10.40Aa)–(10.40Ar)
Unemployment violations ... 410(6)
Yielding to emergency vehicles "Move-over Law" ... 189
Fire and Rescue Commission, State—appointments and membership ... 421(2.21)
Firearms–*see* Weapons
Firefighting–*see* Emergency Services
Firemen's and Rescue Squad Worker's Pension Fund–*see* Retirement
Fish–*see* Hunting and Fishing; Wildlife
Fisheries—oyster habitat restoration ... 276(30.3a)
Fisheries Products—prohibited landfill items ... 362

Flags
Display of official government flags ... 360
Homeowners association regulation ... 422(8), (18)
Fontana Lake—protection for North shore ... 97
Food Services
Access to public facilities for service animals in training ... 450
Food and beverage tax for Monroe ... 261
Inspection schedule amended ... 386(4.1)–(4.2)
Johnson and Wales University funds ... 276(13.6b)
Occupancy tax definitions change ... 276(33.26)–(33.30)
Foods and Beverages—candy sales and use tax change ... 276(33.10)
Forest City, Town of—city employee participation in TSECMMP ... 276(29.32)
Forest Development Act ... 126
Forestry
First in Forestry special plate ... 216(1)
Forest Development Act expansion ... 126
Forestland restoration and fire prevention activities ... 1(5.1i)
Lease purchase/installment contracts for forestry equipment ... 276(12.6)
Local government forestry activity regulation clarification ... 447
Forestry Products
Fraser fir State Christmas tree ... 387(1)
Oversize/overweight vehicles ... 361
Forsyth County
Clemmons, Village of –*see* that heading
Fishing in Triad Park without a license ... 257
Juvenile detention centers study ... 276(16.9)
Kernersville, Town of –*see* that heading
Tobaccoville, Village of –*see* that heading
Walkertown, Town of –*see* that heading
Winston-Salem, City of –*see* that heading
Foster Care
Block grant funds ... 276(5.1a)
Child caring institutions standardized rates ... 276(10.47b)–(10.47d)
Foster care and adoption assistance payments ... 276(10.46a)–(10.46d)
Shortfall funds ... 276(5.1z2)
Franklin County
Louisburg, Town of –*see* that heading
Mediation funds ... 276(14.16)
Nonpartisan elections for Board of Education ... 80
Occupancy tax ... 233(1.1a)–(1.2c)
Fuels
Dyed fuels
Distributer definitions ... 435(19)
Distributer license requirements ... 435(20)
Marking requirement for storage facility ... 435(18)

Fuels—continued
Gasoline sulfur content requirements permanent 196
Kerosene supplier letter of credit in lieu of bond ..... 435(21)
Manufacturing fuel sales and use tax ..... 276(33.20)–(33.22)
Motor fuel tax –*see* Taxes and Assessments
Prohibit MTBE use ..... 93(1)
Funds and Accounts
Agricultural Development and Farmland Preservation Trust Fund Created ..... 390(17)
Alternative Fuel Revolving Fund Created 413
Civil Penalty and Forfeiture Fund
Appropriations ..... 276(6.37b)–(6.37w)
Availability ..... 276(6.37a)
Clean Water Management Trust Fund
Cleanup and prevention of surface water pollution added to purpose ..... 454(4)–(6)
Clean Water Revolving Loan and Grant Fund
Common criteria for Wastewater Reserve and Drinking Water Reserve ..... 454(3)
Renamed Water Infrastructure Fund ..... 454(3)
Conservation Grant Fund
Land use and conservation easements on military base adjacent land ..... 445(1A.2)
Disaster Relief Reserve Fund
Appropriations ..... 1(4.1a)–(4.1h)
Created ..... 1(4)
Distinguished Professors Endowment Trust Fund
Allocations ..... 276(9.21a)–(9.21c)
Ecosystem Restoration Fund
Name change from Wetlands Restoration Fund ..... 386(3.5)
Education Lottery Fund Created ..... 276(31.1t)
Escheat Fund
Investment program for benefit of needy higher education students 252
Need-based financial aid programs ..... 276(9.6a)–(9.6d); 345(11)
Veterans scholarships funding ..... 276(19.2)
Firemen's and Rescue Squad Worker's Pension Fund –*see* Retirement
Fund for Displaced Homemakers
Grants for centers ..... 405(4)–(5)
Future Teachers of North Carolina Scholarship Loan Fund Created ..... 276(9.11a)–(9.11b)
Health and Wellness Trust Fund
Health-related initiatives ..... 276(10.59C)
Help America Vote Act Election Fund
Generally ..... 323(7)
Training and voting systems purchase use ..... 276(23A.2a)–(23A.2d)

Funds and Accounts—continued
Highway Fund
Availability ..... 276(3.2), (28.3a)
Highway Trust Fund
Availability ..... 276(28.3b)
Industrial Development Fund
Transportation infrastructure use ..... 276(13.5)
License to Give Trust Fund
Portion from drivers license fees ..... 276(44.1q)
Marine Resources Endowment Fund
Created ..... 455(2.1)–(2.10)
Transfer of funds from Wildlife Endowment Fund ..... 455(2.9)
Marine Resources Fund
Name changed from Saltwater Fishing Fund ..... 455(2.1)–(2.10)
Military Morale, Recreation, and Welfare Fund ..... 445(1A.1a)–(1A.1c)
Need-Based Scholarship Loan Fund
Administration changes 40
One North Carolina Fund
Economic development incentive grant programs ..... 276(13.6a)
Johnson and Wales University ..... 276(13.6b)
One North Carolina Small Business Account created ..... 276(13.14a)–(13.14b)
Political Parties Financing Fund
Tax designation ..... 345(46)
Private Child Caring Agencies Fund
Block grant funds ..... 276(5.1v)
Public Campaign Fund
Candidate fund raising and spending ..... 430(5)
Certification of eligibility ..... 430(4)
Name change from Public Campaign Financing Fund ..... 276(23A.1d)
State Bar member surcharge for fund ..... 276(23A.1a)–(23A.1e)
Voter guide distribution ..... 430(6)
Riparian Buffer Restoration Fund
Use flexibility for coastal habitat protection ..... 443(1)
Saltwater Fishing Fund
Name changed to Marine Resources Fund ..... 455(2.1)–(2.10)
Self-Insurance Security Fund
Name change from Self-Insurance Guarantee Fund 400
Special Zoo Fund
Use of funds for marketing ..... 386(5)
State Lottery Fund
Created ..... 344(1)
Tobacco Reserve Fund
Amendments ..... 276(6.12a)–(6.12c); 345(2a)–(2b)
Tryon Palace Historic Sites and Gardens Fund
Created ..... 276(19A.1)
Veterans Burial Fund
Veterans cemetery funding ..... 276(19.3)

Funds and Accounts—continued
Volunteer Rescue/EMS Fund
Changes ... 283
Wastewater Treatment Works Emergency Maintenance, Operation, and Repair Fund
Repealed ... 454(7)–(8)
Wetlands Restoration Fund
Renamed Ecosystem Restoration Fund ... 386(3.5)
Wildlife Endowment Fund
Transfer of funds to Marine Resources Endowment Fund ... 455(2.9)
Wireless 911 Fund
Allocations ... 439(6)
Eligible expenses ... 439(9)
Unauthorized use of funds ... 439(7)
Funeral Service, North Carolina Board of—appointments and membership ... 421(1.19), (2.22)
Funeral Services
Health care power of attorney after death ... 351
Sales and use tax ... 276(33.9)
Veterans cemetery funding ... 276(19.3)

G

Gaming
Cockfighting penalty increase ... 437
Lottery created ... 276(31.1a)–(31.1ii); 344
Raffles maximum cash prize ... 345(31)
Garner, Town of—Swift Creek Management Plan enforcement ... 89
Gaston County
Belmont, City of –*see* that heading
Cramerton, Town of –*see* that heading
Gastonia, City of –*see* that heading
Gastonia, City of
Schiele Museum of Natural History grassroots science program grant-in-aid ... 276(12.5a)
TSECMMP participation by Piedmont Community Charter School ... 317
TSERS participation by Piedmont Community Charter School ... 317
General Assembly
Appropriations--current operations ... 276(2.1)
Dorothea Dix and Blue Ridge Road properties disposition limited ... 276(6.25a)–(6.25c)
Employees' salaries ... 276(29.10)
Fiscal Research Division
Enrollment growth funding model review ... 276(9.4)

General Assembly—continued
Legislative committees and commissions –*see* particular committee/commission
Legislative Research Commission –*see* that heading
Legislative Retirement System –*see* Retirement
Legislative Services Commission
Zero-based budget review ..... 276(6.34a)–(6.34c)
Lobbying
Legislative branch ..... 456(1)
Restrictions on former members ..... 456(1)
Membership on Roanoke River Basin Advisory Committee ..... 37(2)–(3)
Police jurisdiction 359
Principal Clerks' salaries ..... 276(19B.1), (29.8); 345(40)
Resolution of contested Council of State elections procedures 3
Retirement –*see* that heading
Sergeants-at-Arms' and Reading Clerks' salaries ..... 276(29.9)
Study committees and commissions –*see* particular committee/commission
General Contractors, North Carolina Licensing Board for
Cost recovery for investigation of violations ..... 381(4)–(5)
Fee increase ..... 381(1)–(3)
Geography
Boundary settlement between Wilson and Greene Counties 259
Floodplain mapping and inclusion of landslide vulnerability data ..... 1(6)
Gibson, Town of—town commissioners' terms 61
Gibsonville, Town of
Annexation ..... 87(2)
Deannexation ..... 87(1)
Global Climate Change, Legislative Commission on--created 442
Global TransPark Authority
Appointments and membership ..... 421(1.20)
Obligations final maturity sunset ..... 144; 201(2)
Proceeds of property divestment for unmet obligations ..... 276(28.17)
Global TransPark Development Commission–*see* Eastern Region Development Commission
Goldston, Town of
Public-private reimbursement agreements for infrastructure development 41
Golf Carts–*see* Motor Vehicles
Governmental Operations, Joint Legislative Commission on
Consultation requirement
Community development block grants reallocations ..... 276(5.2g)
Federal aid acts consultation removed for Transportation Dept. ..... 276(28.1)

Governmental Operations, Joint Legislative Commission on—continued
Consultation requirement—continued
No prior consultation for emergency contingency allocations ..... 276(5.1h)
Not necessary for certain fees ..... 276(6.8a)–(6.8c)
Prior consultation by agency detailed report ..... 276(6.7a)–(6.7b)
State real property acquisition requirement eliminated 39
E-commerce fees approval 92
Governor, Office of the
Advisory councils authorized to advise agencies on hurricane recovery efforts ..... 1(5.5)
Appropriations
Current operations ..... 276(2.1)
Authorization to transfer Disaster Relief Reserve funds to federal agencies and local governments ..... 1(5.2)
Governor's salary ..... 276(29.1a)
Lobbying
Executive branch regulation ..... 456(2)
Legislative branch ..... 456(1)
Restrictions on former governors ..... 456(1)
More at Four –*see* Health and Human Services, Department of (DHHS)
Office of School Readiness creation plan ..... 276(10.68a)–(10.68d)
Graham County—protection for North shore of Fontana Lake 97
Grants
Block grants –*see* Appropriations; particular agency
Common criteria for Wastewater Reserve and Drinking Water Reserve ..... 454(3)
Conflict of interest policy for State grant recipients ..... 276(6.9a)–(6.9c)
Correction Dept. matching funds to receive federal grants ..... 276(17.9)
Federal funds use as State matching funds for Juvenile Accountability Incentive Block Grants ..... 276(16.5)
Federal grant reporting for Correction Dept. ..... 276(17.1)
Fund for Displaced Homemakers ..... 405(4)
Gang violence prevention grant process ..... 276(16.8a)–(16.8b)
Juvenile Crime Prevention Councils grant reporting and certification ..... 276(16.2a)–(16.2b)
No tax debts for State grant recipients ..... 276(6.9a)–(6.9c)
SBIR/STTR Incentive Program created ..... 276(13.14b)
State match for Judicial Department grant funds ..... 276(14.6)
Granville County
John H. Kerr Reservoir operations evaluation ..... 276(30.3a)
Mediation funds ..... 276(14.16)
Oxford, City of –*see* that heading

Grape Growers Council
Funds increase ..... 276(11.4)
Transferred to Commerce Department ..... 380(4a)–(4d)
Greene County
Boundary settlement with Wilson County 259
Building permit prohibition for those with delinquent taxes ..... 433(3a)–(3b)
Greensboro, City of
Closing-out sale license issuance 12
Natural Science Center of Greensboro grassroots science program grant-in-aid ..... 276(12.5a)
North Carolina Agricultural & Technical State University –*see* University of North Carolina
UNC-Greensboro –*see* University of North Carolina
Greenville, City of
East Carolina University –*see* University of North Carolina
Greenville Children's Museum grassroots science program grant-in-aid ..... 276(12.5a)
Repair or demolition of dwellings unfit for habitation 200
Satellite annexation cap removed 71
Grifton, Town of—overgrown vegetation violators annual notice 45
Group Homes–*see* Mental Health
Guardianship—recommendation of guardian for incompetent adult 333
Guilford County
Fishing in Triad Park without a license 257
Greensboro, City of –*see* that heading
High Point, City of –*see* that heading
Juvenile detention centers study ..... 276(16.9)
Oak Ridge, Town of –*see* that heading
Sedalia, Town of –*see* that heading

H

Half-Way Houses and Correctional Group Homes–*see* Correctional Institutions
Halifax County
Occupancy tax 46
Roanoke Rapids, City of –*see* that heading
Weldon, Town of –*see* that heading
Handguns–*see* Weapons
Harnett County
Angier, Town of –*see* that heading
Fox hunting law repealed 28
Motor vehicle laws apply on streets of Carolina Lakes Community 260

Haywood County
Canton, Town of –*see* that heading
Hurricane recovery 1
Maggie Valley, Town of –*see* that heading
Hazardous Substances
Mercury switch recovery 384
Pesticide disposal program ..... 276(11.1)
Prohibit MTBE use in motor fuels ..... 93(1)
Warren National Guard armory asbestos/lead abatement ..... 345(32)
Hazardous Waste—motor vehicle repair act clarification ..... 463(1)
Health and Human Services, Department of (DHHS)
Accreditation of residential treatment facilities
feasibility study ..... 276(10.35Aa)–(10.35Ab)
ADAP (AIDS Drug Assistance Program) ..... 276(10.59b)
Adult assisted living communities licensure category 66
Adult Protective Services Task Force
Adult protective services improvement 23
Alcohol and drug education traffic schools
Fees ..... 312(1)
Instructor qualifications ..... 312(2)
Outcomes evaluation study ..... 312(4)
Alternative response system of child protection
assessment ..... 55(13)
Appropriations
ALS Association Catfish Hunter Chapter funds ..... 276(10.10B)
Block grant funds ..... 276(5.1a)–(5.1cc)
Childhood immunization programs ..... 276(10.58a)–(10.58b)
Community Health Center funds ..... 276(10.9a)–(10.9d)
Current operations ..... 276(2.1)
Defibrillators in public buildings pilot program ..... 276(10.57a)–(10.57c)
Division of Aging and Adult Services
Current operations ..... 276(2.1)
Home and community care ..... 276(5.1a)
Senior center outreach ..... 276(10.37a)–(10.37c)
Division of Child Development
Current operations ..... 276(2.1)
Division of Education Services
Current operations ..... 276(2.1)
Division of Facility Services
Adult care licensing program ..... 276(5.1a)
Current operations ..... 276(2.1)
Mental health licensure ..... 276(5.1a)
Division of Medical Assistance
Current operations ..... 276(2.1)

Health and Human Services, Department of (DHHS)—continued
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
Comprehensive treatment services program for children ..... 276(5.1i)
Current operations ..... 276(2.1)
Developmentally disabled program ..... 276(5.1a)
Division of Public Health
AIDS funds ..... 276(5.1a)
Current operations ..... 276(2.1)
Health information systems development ..... 276(10.59Aa)–(10.59Ab)
Minority recruitment to pharmacy schools pilot program ..... 276(10.59B)
School nurse funding ..... 276(10.53a)–(10.53b)
Division of Services for the Blind, Deaf, and Hard of Hearing
Current operations ..... 276(2.1)
Independent living program ..... 276(5.1a)
Division of Social Services
Current operations ..... 276(2.1)
Division of Vocational Rehabilitation Services
Current operations ..... 276(2.1)
Easter Seals Society ..... 276(5.1a)
Health disparities initiative ..... 276(10.59E)
Medicaid cost containment activities ..... 276(10.14)
Medicaid reserve fund transfer ..... 276(10.15)
More at Four ..... 276(10.67a)–(10.67g)
NC Health Choice
Current operations ..... 276(2.1)
Office of the Secretary
Low-income elderly outreach ..... 276(5.1a)
Oil overcharge funds for Weatherization Assistance Program ..... 276(19.4a)
Rural hospital operations ..... 276(10.59H)
School nurse funding ..... 276(10.53a)–(10.53b)
Special children adoption fund ..... 276(10.48a)–(10.48c)
Ticket to Work Medicaid buy-in ..... 276(10.18a)–(10.18c)
Block Grants
Federal fund availability ..... 276(5.1c)
Monitoring and oversight plan ..... 276(5.1e)
Plan ..... 276(5.1b)
Plans ..... 276(5.1b)
Certificates of need 325
Child abuse/neglect responsible individuals list creation 399
Child care
Allocation formula ..... 276(10.61a)–(10.61c)

Health and Human Services, Department of (DHHS)—continued
Child care—continued
Funds matching requirement ..... 276(10.60)
Institutions overhead rates and reimbursements audit ..... 276(10.47a)
Institutions standardized rates ..... 276(10.47b)–(10.47d)
Revolving loan ..... 276(10.63)
Subsidy rates ..... 276(10.62a)–(10.62h)
Child support
Enforcement 389
Program enhanced standards ..... 276(10.43a)–(10.43b)
Children services work group ..... 276(10.25h)
Chronic disease prevention activities inventory ..... 276(10.56)
Community Care of N.C. expanded ..... 276(10.17a)–(10.17e)
Community Health Center
Community health center, rural health center funding study ..... 276(10.9d)
Funds ..... 276(10.9a)–(10.9d)
Comprehensive treatment services program for children continuation ..... 276(10.25a)–(10.25m)
Continued operation of health care facility with invalidated certificate of need under certain circumstances ..... 276(10.40Ba)–(10.40Bb)
Controlled substances reporting ..... 276(10.36a)–(10.36c)
Criminal record checks
Adoption ..... 114(1)–(3)
Employment ..... 114(4)
Difficult to place children adoption incentives study ..... 276(10.49)
Division of Aging and Adult Services
Adult care homes quality improvement consultation program ..... 276(10.40Ap)
Senior center outreach ..... 276(10.37a)–(10.37c); 345(21)
Division of Child Development
Child care facilities licensure strengthening 36
Child care subsidy reimbursement system analysis ..... 276(10.66a)–(10.66b)
Drop-in/short-term child care study ..... 416(3.1)
Incorporation of Davie County early literacy project in More at Four study ..... 276(10.67g)
Division of Facility Services
Fees ..... 276(41.2a)–(41.2k)
Residential treatment facility licensure ..... 276(10.40a)–(10.40b)
Division of Medical Assistance (*see also* Medicaid)
Community alternative programs reimbursement system study ..... 276(10.20a)–(10.20b)
Disproportionate share receipts disposition ..... 276(10.12a)–(10.12b)
Elderly, blind, disabled Medicaid coverage ..... 276(10.11e)

Health and Human Services, Department of (DHHS)—continued
Division of Medical Assistance (*see also* Medicaid)—continued
Electronic quality prescription management program implementation ..... 276(10.19B)
Medicaid information system enhancement funds ..... 276(10.11p)
Medicaid personal care services study ..... 276(10.19a)–(10.19b)
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
Appeals process for mh,dd,sas clients ..... 276(10.35a)–(10.35b)
Community mh,dd,sas delivery procedures ..... 276(10.31)
Comprehensive treatment services program for children continuation ..... 276(10.25a)–(10.25m)
Involuntary commitment facilities listing ..... 371(1)
Physician services offset funds ..... 276(10.6)
Private agency uniform cost-finding requirement ..... 276(10.30)
Residential treatment facility licensure ..... 276(10.40a)–(10.40b)
Division of Public Health
Defibrillators in public buildings study ..... 276(10.57a)–(10.57c)
Early intervention reporting and evaluation ..... 276(10.54a)–(10.54c)
Governor's vision care program created ..... 276(10.59Fa)–(10.59Fh); 345(20a)–(20d)
Minority recruitment to pharmacy schools pilot program ..... 276(10.59B)
School nurse funding initiative ..... 276(5.1cc)
Division of Services for the Blind, Deaf, and Hard of Hearing
NonMedicaid reimbursement charges ..... 276(10.5)
Division of Social Services
After-school programs/services for at-risk children ..... 276(5.1q)
Child welfare training projects ..... 276(5.1s)
Guidelines for awarding funds to private/public adoption agencies ..... 276(5.1u)
Multiple response system ..... 276(10.45a)–(10.45b)
Special children adoption fund ..... 276(10.48a)–(10.48c)
Work First domestic violence plans ..... 276(5.1p)
Early Childhood Education and Development Initiatives
Administration ..... 276(10.64a)
Competitive bid practices ..... 276(10.64b)
Enhancements ..... 276(10.64a)–(10.64g)
Funds allocation ..... 276(10.64e)
Matching funds requirement ..... 276(10.64c)
Performance-based evaluation system implementation ..... 276(10.64d)
Smart Start funding study ..... 276(10.65a)–(10.65b)
Use of funds for child care subsidies ..... 276(10.64f)–(10.64g)
Education personnel salary supplements ..... 276(29.19a)–(29.19b)
Federal funding of HHS schools ..... 276(7.54a)–(7.54c)
Foster care and adoption assistance payments ..... 276(10.46a)–(10.46d)

Health and Human Services, Department of (DHHS)—continued
Health Care Personnel Registry study ..... 276(10.40Aq)
Health disparities initiative ..... 276(10.59E); 345(19)
Home Care Clients' Bill of Rights ..... 276(10.40An)
Information technology plans ..... 276(10.1a)–(10.1e)
Intensive family preservation services enhancements ..... 276(10.51Aa)–(10.51Ad)
Long term plan for meeting mh,dd,sas needs ..... 276(10.24a)–(10.24c)
Medicaid –*see* that heading
Medicaid/Medicare dual eligibility study ..... 276(10.21E)
Medical liability coverage ..... 276(10.7a)–(10.7c)
Medication Aide Registry ..... 276(10.40Cc)
Medication aides in skilled nursing facilities ..... 276(10.40Ca)–(10.40Cd)
Mental health consumer advocacy program
contingent on appropriations ..... 276(10.27)
Mental retardation centers downsizing ..... 276(10.29a)–(10.29d)
More at Four
Continued implementation ..... 276(10.67a)–(10.67g)
Eligibility requirements ..... 276(10.67e)
Incorporation of Davie County early literacy project study ..... 276(10.67g)
Transfer to Dept. of Public Instruction or DHHS study ..... 276(10.68a)–(10.68d)
N.C. FAST (Families Accessing Services through Technology) funds use ..... 276(10.1e)
NonMedicaid reimbursement charges ..... 276(10.5)
Office of Educational Services
Residential schools reporting ..... 276(10.52)
Office of Policy and Planning
Created ..... 276(10.2)
Office of School Readiness creation plan ..... 276(10.68a)–(10.68d)
Oversight and monitoring of mental health services study ..... 276(10.34)
Payroll deduction for child care services ..... 276(10.8)
Provider reimbursement rates ..... 276(10.10)
Provider tracking database system ..... 276(10.10A)
Regulatory changes to improve quality and safety of certain facilities and services ..... 276(10.40Aa)–(10.40Ar)
Residential schools conformed to public school accountability systems and improvement plans 195
Residential treatment of children rules ..... 276(10.35B)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Secretary
Appropriations ..... 276(2.1)
Membership of Education Cabinet ..... 276(7.38a)
Salary ..... 276(29.2)

Health and Human Services, Department of (DHHS)—continued
Senior Cares program ..... 276(10.4a)–(10.4c)
Services to multiply diagnosed adults ..... 276(10.26a)–(10.26d)
Smart Start –*see* Early Childhood Education and Development Initiatives this heading
Star-rating system for adult care homes ..... 276(10.41)
State laboratories consolidation study ..... 276(6.36a)–(6.36c); 345(4)
State-county special assistance
Adult care homes ..... 276(10.38a)–(10.38e)
In-home care ..... 276(10.39a)–(10.39c); 345(18)
TANF FY2005-2007 State plan approved ..... 276(10.51a)–(10.51c)
UNC-Chapel Hill psychology student stipends ..... 276(5.1j)
Health and Wellness Trust Fund Commission—
health-related initiatives funds ..... 276(10.59C)
Health, Departments of (county)
Accreditation system 369
AIDS funds ..... 276(5.1a)
Childhood immunization programs funds ..... 276(10.58a)–(10.58b)
Community Health Center funds ..... 276(10.9a)–(10.9d)
Community health center, rural health center funding study ..... 276(10.9d)
Health disparities initiative ..... 345(19)
Health information systems development funds ..... 276(10.59Aa)–(10.59Ab)
Smoking restrictions 19; 168
Health Insurance Innovations Commission—appointments and membership ..... 421(2.24)
Health Services
Abortion Fund limitations ..... 276(10.50)
Anatomic pathology services markup disclosure 415
Benign brain tumor cancer registries compliance 373
Block grant funds ..... 276(5.1a)
Continued operation of health care facility with invalidated certificate of need under certain circumstances ..... 276(10.40Ba)–(10.40Bb)
Co-payments for chiropractic care higher than similar physician care prohibited ..... 276(6.29)
Critical access hospital defined ..... 346(1)
DHHS provider reimbursement rates ..... 276(10.10)
Gastrointestinal endoscopy room regulation ..... 346(2)–(8)
Governor's vision care program created ..... 276(10.59Fa)–(10.59Fh); 345(20a)–(20d)
Health care power of attorney after death 351
Home Care Clients' Bill of Rights ..... 276(10.40An)
In-home assistance ..... 345(18)

Health Services—continued
Inmate health care cost containment study ..... 276(17.15a)–(17.15d)
Medicaid –*see* that heading
Medical Child Care Pilot funds ..... 276(5.1k)
Medical liability coverage for certain department employees ..... 276(10.7a)–(10.7c)
Medication aides in skilled nursing facilities ..... 276(10.40Ca)–(10.40Cd)
Medication aides study ..... 276(10.40Da)–(10.40Df)
Merger of hospital authorities and/or charitable/religious hospital 449
NC Health Choice services to children ..... 276(10.22a)–(10.22c)
Newborn screening fee ..... 276(41.1a)–(41.1b)
Newborn Screening Program testing followups ..... 276(5.1bb)
NonMedicaid reimbursement charges ..... 276(10.5)
Perfusionist licensure 267
Pharmacy related medical errors and incidents 427
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ..... 276(10.40Aa)–(10.40Ar)
School-linked health centers study ..... 276(10.59Ga)–(10.59Gc)
Translational medicine program at UNC-Chapel Hill ..... 345(13)
Health Services, Commission for
Controlled substances reporting ..... 345(17)
Early intervention program rules ..... 276(10.54A)
Food services inspection schedule amended ..... 386(4.1)–(4.2)
Mercury switch recovery 384
Heart Disease and Stoke Prevention Task Force, Justus-Warren—appointments and membership ..... 421(1.24), (2.28)
Henderson, City of—abandoned/junk vehicles 10
Henderson County
Divide District Court district 29 ..... 276(14.2f)–(14.2k)
Divide prosecutorial district 29 ..... 276(14.2l)–(14.2q)
Hurricane recovery 1
Mills River, Town of –*see* that heading
Superior Court District 29 divided ..... 276(14.2a)–(14.2e2)
Tax collector appointed post ..... 305(8a)–(8c)
Hertford County—water/wastewater project funds ..... 276(13.11b)
Hickory, City of—Catawba Science Center grassroots science program grant-in-aid ..... 276(12.5a)
High Point, City of
Election law changes ..... 54(1b)
International home furnishings market funds ..... 345(26)
Mayor Pro Tem ..... 54(1a)
Repair or demolition of dwellings unfit for habitation 200

Higher Education—continued
Enrollment of gifted youths in community colleges ..... 77(2)–(3)
Escheat Fund investment program for benefit of needy higher education students..... 252
Scholarships from lottery funds..... 344(2)
Highlands, Town of—Highlands Nature Center grassroots science program grant-in-aid ..... 276(12.5a)
Hillsborough, Town of—occupancy tax definitions change..... 276(33.29)
Historic Preservation—demolition of structures in Statesville historic district..... 143
Holden Beach, Town of—canal dredging fee 90
Holly Springs, Town of
Condemnation authority 57
Public-private reimbursement agreements for infrastructure development..... 41
Home Inspector Licensure Board—appointments and membership ..... 421(1.21)
Homicide–*see* Crimes
Hospices—certificates of need 325
Hospitals and Clinics
Anatomic pathology services markup disclosure 415
Benign brain tumor cancer registries compliance 373
Blue Ridge Road, and Dorothea Dix properties disposition limited ..... 276(6.25a)–(6.25c)
Brody School of Medicine family medical center..... 276(9.26a)–(9.26d)
Certificates of need 325
Community Health Center
Community health center, rural health center funding study ..... 276(10.9d)
Funds ..... 276(10.9a)–(10.9d)
Conflict of interest law ..... 70(1)
Continued operation of health care facility with invalidated certificate of need under certain circumstances ..... 276(10.40Ba)–(10.40Bb)
Controlled substances reporting ..... 276(10.36a)–(10.36c); 345(17)
Critical access hospital defined ..... 346(1)
Disproportionate share
Payments ..... 201(4)
Receipts disposition..... 276(10.12a)–(10.12b)
Division of Facility Services fees ..... 276(41.2a)–(41.2k)
Dorothea Dix Hospital
Dorothea Dix and Blue Ridge Road properties disposition limited..... 276(6.25a)–(6.25c)
Master plan extension..... 7
Gastrointestinal endoscopy room regulation ..... 346(2)–(8)
Health Care Personnel Registry study ..... 276(10.40Aq)

Higher Education—continued
Horace Williams Airport operation and study....276(9.15)
Investment of reserve funds.... 417
Involuntary committment mental health facilities listing....371(1)
Merger of hospital authorities and/or charitable/ religious hospital 449
Residential corrections substance abuse treatment bed capacity increase....276(17.30)
Residential treatment facility licensure .... 276(10.40a)–(10.40b)
Rural health center, community health center funding study ....276(10.9d)
Rural hospital operations funds ....276(10.59H)
State psychiatric hospitals transition planning .... 276(10.28a)–(10.28d)
Hotels and Motels
Occupancy tax –*see* Taxes and Assessments
Housing
Action for failure to pay rent ....423(10)–(12)
Early termination of agreements by military personnel ....445(4.1)–(4.2)
Escrow and trust accounts for buyers deposits on manufactured homes.... 451
HOME Program matching funds .... 276(20.1a)–(20.1c)
Home protection pilot program and loan fund expansion ....276(20.2a)–(20.2f)
Homeowners association homeowner protections 422
House mover regulation.... 354
Housing authorities rental preferences ....423(8)
Housing programs and assistance funds....1(5.1h)
Licensing fees for manufactured home businesses.... 297
Notification for termination of rental space for manufactured homes.... 291
Oversize/overweight vehicles manufactured homes 361
Prohibition of State funds use in construction in 100-year floodplain .... 1(5.10a)–(5.10c)
Repair or demolition of dwellings unfit for habitation in certain cities....200; 305(12a)–(12b)
Tenant rights under domestic violence statutes....423(5)–(7)
Vacation rental home agreements.... 292
Weatherization program funds ....276(5.1a)
Housing Finance Agency Board of Directors
Appointments and membership ....421(1.22), (2.25)
Appropriations
Current operations....276(2.1)
HOME Program matching funds .... 276(20.1a)–(20.1c)
Home protection pilot program and loan fund expansion....276(20.2a)–(20.2f)
Housing Partnership—appointments and membership....421(2.26)

Human Relations Commission—advocacy programs
study continuation ..... 276(19.1)
Humanities Council
Reports –*see* that heading
Hunting and Fishing
Black bear baiting prohibited 298
Coastal recreational fishing license
Funds ..... 276(12.4a)–(12.4c)
Implementation ..... 455(1.1)–(1.5)
Computer-assisted remote hunting prohibited 62
Currituck deer hunting changes 15
Disabled sportsman program
Activities scheduling ..... 438(3)
Fees ..... 438(3)
Domestically propagated waterfowl and game birds
for dog training 76
Electronic dog collar removal statewide 94
Fishing in Triad Park without a license 257
Fox hunting law repealed in Harnett County 28
Fox hunting/trapping season in Person County 262
Hunting and fishing on tribal lands by tribal members
without a license 285
Hunting from public right-of-way prohibited in
Vance County ..... 31(1)–(3)
Hunting on private property prohibited without
written permission in certain counties ..... 264; 433(5)–(6)
Hunting on registered lands increased fines in
Vance County ..... 31(4)
Inland fishing licenses ..... 455(1.6)–(1.15)
Licensure and education requirements for those
under 16 ..... 438(1)–(2)
Managed hunts minors licensing requirements 82
NC Trout Unlimited special plate ..... 216(1), (3)–(7)
Non-resident students treated as residents for
license purposes ..... 455(1.21)
Unified hunting and fishing licenses ..... 455(1.16)
Wildlife Resources Commission license agents ..... 455(3.1)–(3.3)
Hurricane Recovery Act 1
Hyde County
Courthouse and other building repair funds ..... 1(5.1f)
Deputy clerk of court position ..... 345(30a)–(30b)
Far Creek maintenance dredging ..... 276(30.3a)
Indigent defense positions ..... 345(28)
Ocracoke NCCAT estuarine shoreline protection ..... 276(30.3a)
Ocracoke School hurricane repair funds ..... 345(9)
Swan Quarter flood control dykes ..... 276(30.3a)

I

Identification Systems
Biometric ID for purchasers of alcohol and tobacco products ... 350(6a)–(6b)
Identity theft protections ... 414
Social security number protections ... 414(1), (4)
Identity Theft Protection Act ... 414
Immunizations–*see* Public Health
Indian Affairs, State Commission of
Advocacy programs study continuation ... 276(19.1)
Appointments and membership ... 421(2.27)
Appropriations
In-home services for the elderly ... 276(5.1a)
Weatherization program funds ... 276(5.1a)
Hunting and fishing on tribal lands by tribal members without a license ... 285
Indigent Defense Services, Office of
Appropriations
Current operations ... 276(2.1)
Expansion ... 276(14.11); 345(28)
Inmate legal assistance ... 276(14.9c)
Public defender office established in 5th defender district ... 276(14.14b); 345(50A)
Wake County public defender ... 276(14.10)
Attorney fees ... 276(14.13)
Cost reduction proposals ... 276(14.12)
Death penalty training funds for indigent defense ... 276(14.8)
Guardian ad litem restrictions ... 398
Inmate legal assistance responsibility transferred from Correction Dept. ... 276(14.9a)–(14.9d)
New positions ... 345(28)
Public defender office established in 5th defender district ... 276(14.14a)–(14.14b); 345(50A)
Recouping costs for indigent legal services ... 254
Reports –*see* that heading
Technical corrections and conforming changes ... 250
Indigents
Indigent defense technical corrections ... 250
Recouping costs for indigent legal services ... 254
Industrial Commission
Access to medical information for workers compensation ... 448(6.1)–(7)
Alternative funding study ... 276(13.6A)
Chief Deputy Commissioner position ... 276(29.20b)
Commissioners' salaries ... 276(29.20a)–(29.20b)
Fees ... 276(45.1a)–(45.1b)

Industrial Commission—continued
No benefit from unlawful conduct under workers compensation ..... 448(8)
Prompt payment of worker's compensation ..... 448(4)
Resolution of workers' compensation dispute
Resolution of dispute ..... 448(5)
Information Technology (*see also* Electronic Government)
College Information System Project funds ..... 276(8.1a)–(8.1c)
Competitive broadband encouragement 95
Computer supplies sales tax holiday ..... 276(33.11)
Computer-assisted remote hunting prohibited 62
Computer/data processing services funds for Correction Dept ..... 276(17.10)
Defense Technology Innovation Center funds ..... 276(8.11)
DHHS information technology plans ..... 276(10.1a)–(10.1e)
Electronic quality prescription management program implementation ..... 276(10.19B)
Health information systems development funds ..... 276(10.59Aa)–(10.59Ab)
Infrastructure information collection and management methods study ..... 276(6.33a)–(6.33b)
Internet sex predators 121
Local school technology plan workshops ..... 276(7.43b)
Medicaid information system enhancement funds ..... 276(10.11p)
Multiyear information technology infrastructure maintenance contracts authorized ..... 276(20A.1a)–(20A.1c)
N.C. FAST (Families Accessing Services through Technology) funds ..... 276(5.1y), (10.1e)
Personnel and payroll system replacement funds ..... 276(6.14)
Regional education networks feasibility study ..... 276(7.42)
Resources needed for schools for 21st century learners study ..... 276(7.43e)
School technology needs assistance ..... 276(7.43a)–(7.43f)
School technology plans
Funding requirements ..... 276(7.43d)
Review ..... 276(7.43c)
Statewide Automated Fingerprint Identification System replacement ..... 276(15.9a)–(15.9d)
Student information system testing/implementation funds do not revert ..... 276(7.25a)–(7.25b)
Technology infrastructure enhancements for Retirement Systems Division report ..... 276(27.1)
Virtual high school planning and funding ..... 276(7.41a)–(7.41e)
Worthless checks fund for Judicial Department office technology ..... 276(14.3)

Information Technology Services, Office of
Appropriations--new positions and consolidation ..... 276(6.14)
Chief Information Officer's salary ..... 276(29.3)
E-commerce fees approval 92
Information Technology Fund availability ..... 276(6.13a)–(6.13c)
Information technology procurement by UNC ..... 276(9.8)
Multiyear infrastructure maintenance contracts authorized ..... 276(20A.1a)–(20A.1c)
Infrastructure
Condemnation authority for Holly Springs 57
Deep channel port and collateral rail requirements needs assessment ..... 276(28.26a)–(28.26b)
Industrial Development Fund use for transportation infrastructure ..... 276(13.5)
Infrastructure agreements ..... 426(8)
Infrastructure information collection and management methods study ..... 276(6.33a)–(6.33b)
North Carolina Infrastructure Program funds ..... 276(13.12a)
Public-private reimbursement agreements 41
Universal service provider designation 385
Inspections
Animal waste management system inspection pilot program extended ..... 276(12.7a)–(12.7c)
Boiler act changes ..... 453(1)–(14)
Falsification of highway inspection or test report unlawful 96
HMO statutory deposits ..... 215(18)
Inspections/investigations of violations of Pharmacy Act ..... 402(1.1)–(1.2)
Passenger tramway safety enhancement 347
Prisons constructed through lease-purchase agreements 98
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ..... 276(10.40Aa)–(10.40Ar)
Institutionalized Persons–*see* Mental Health
Insurance
Accident
Actuarially sound premium rate ..... 223(1a)
Annual filing and actuarial rate certification 412
Appeal of emergency cease and desist order 217
Beneficiary in definition of claimant ..... 223(7)
Conform HIPAA to federal law 224
Credit
Technical corrections and conforming changes 181
Death benefits –*see* Life, this heading
Exempt certain insurers from risk-based capital provisions ..... 215(22)
Foreign investment clarification for insurers ..... 215(10)
Grievance/appeals statutes apply to individual coverage ..... 223(8)

Insurance—continued
Group annuity certificates of coverage....234(3)
Health
Actuarially sound premium rate....223(1a)
Annual filing and actuarial rate certification 412
Certificates of need.... 325
Claims history not basis for renewal rates ....223(1b)
Co-payments for chiropractic care higher than similar physician care prohibited ....276(6.29); 345(3a)–(3c)
HMO dissolution plan approval....215(20)
Inmate costs.... 276(17.6a)–(17.6c)
Inmate health care cost containment study .... 276(17.15a)–(17.15d)
Insurance company tax changes.... 276(38.4a)–(38.4d)
Medicaid –*see* that heading
NC Health Choice
Prescription drug payments ....276(10.22d)
Services to children.... 276(10.22a)–(10.22c)
NonMedicaid reimbursement charges....276(10.5)
Pre-existing condition clarification .... 223(4a)–(4b)
Reporting requirement change for certain HMOs....215(19)
Small Employer Health Insurance Pool Board membership reduction....223(5)
Sole proprietor exemption for large group coverage .... 223(2a)–(2c)
Teachers' and State Employees' Comprehensive Major Medical Plan (TSECMMP)
Forest City employee participation....276(29.32)
Mammogram coverage .... 276(29.31a), (29.31c)
Optional health plans .... 276(29.33a)–(29.33d)
Out-of-pocket expenditures ....276(29.31b), (29.31d)
Participation by certain charter schools.... 317
Prescription copays....276(29.31a)
Salary-related employer contributions.... 276(29.24a)–(29.24e)
Insurance market conduct analysis and financial analysis file confidentiality 206
Insurer notification of ceo/president change ....215(6)
Insurer unsound financial condition redefinition....215(2)
Interstate Insurance Product Regulation Compact 183
Liability
Insurance for school social worker transporting students.... 355
Passenger tramway safety enhancement 347
Public Transportation Authorities treated as cities for purposes of civil liability 160
Licensed insurance company fees consolidation....424(1.1)–(1.6)
Life
Death benefits act definition for emergency workers ....276(29.30C)
Employer-owned life insurance disclosure ....234(2)

Insurance—continued
Life—continued
Law enforcement officers', firemen's, rescue squad workers', and civil air patrol member's death benefit extended 376
Life insurance and annuity disclosure ..... 234(1)–(1.11)
Medicaid –*see* that heading
Medicare –*see* that heading
Mortgage guarantee insurers report of policyholders position ..... 215(11)–(12)
Motor vehicle
Reinsurance Facility Board of Governors –*see* Motor Vehicle Reinsurance Facility, Board of Governors
Mutual insurance company policyholder vote on guaranty capital retirement ..... 215(26)
Oath of statutory compliance required of all insurers ..... 215(1)
Property
Subrogation by State for damaged homes relocated or purchased under hazard mitigation grant program ..... 1(5.4)
Regulatory charge ..... 276(40.1a)–(40.1b)
Reinsurance agreement encumbered assets change ..... 215(25)
Standard and expedited external review procedures ..... 223(10a)–(12)
Statistical organization licensing 210
Statutory deposit clarification ..... 215(4)
Technical corrections and conforming changes 215
Unauthorized insurers clarification 209
Unemployment
Benefits and rate changes 410
Workers' compensation
Access to medical information ..... 448(6.1)–(7)
Disability benefits study ..... 448(1a)
Intoxication definition ..... 448(2)
No benefit from unlawful conduct ..... 448(8)
Prompt payment ..... 448(4)
Resolution of dispute ..... 448(5)
Self-insurance group dissolution approval ..... 215(15)
Self-insurance security system 400
Settlement agreement when employer pays medical ..... 448(3)
Insurance, Department of
Annual filing and actuarial rate certification for insurance providers 412
Appropriations
Anson County volunteer fire departments ..... 345(35)
Current operations ..... 276(2.1)
Union County volunteer fire departments ..... 345(35)
Bail bondsmen denial of license review 240

Insurance, Department of—continued
Commissioner
Authority of enforcement and penalties against credit insurers ... 181
Salary ... 276(29.1b)
Consumer Protection Fund
Scope of services broadened ... 215(21)
Credit insurance technical corrections ... 181
Exempt certain insurers from risk-based capital provisions ... 215(22)
Inspection and review of prisons constructed through lease-purchase agreements ... 98
Insurer appeal of emergency cease and desist order ... 217
Interstate Insurance Product Regulation Compact ... 183
Medicare lookout program coordinator position ... 424(2)
Mortgage guarantee insurers report of policyholders position ... 215(11)–(12)
Oath of statutory compliance required of all insurers ... 215(1)
Professional Employer Organization surety bond cancellation ... 124(1)
Reinsurance agreement encumbered assets change ... 215(25)
Standard and expedited external review procedures ... 223(10a)–(12)
Statistical organization licensing ... 210
Transfer Insurance Regulatory Funds to General Fund ... 276(21.1)
Workers' compensation self-insurance security system ... 400
Intellectual Property
Trademark violations position in Secretary of State's office ... 276(23.1)
Trademark/logo use on special plates ... 216(2)
Unlawful operation of audiovisual recording device ... 301
Interagency Council for Coordinating Homeless Programs
Appropriations
Block grant funds ... 276(5.1a)
Block grant funds administrative code exemption ... 276(5.1g)
Internet–*see* Information Technology
Interpreter and Transliterator Licensing Board
Appointments and membership ... 421(1.23)
Civil penalty assessment ... 299(3)–(4)
Exempt persons ... 299(1)
Provisional licenses ... 299(2)
Interstate Commission for Juveniles—created ... 194
Interstate Cooperation
Interstate Compact for Juveniles ... 194
Interstate Insurance Product Regulation Compact ... 183
Phaseout of MTBE use in motor fuels regional approach ... 93(2)–(4)
Streamlined sales and use tax agreements ... 276(33.16)–(33.18), (33.24), (33.31)
Interstate Insurance Product Regulation Commission—created ... 183(1)

Interstate Juvenile Supervision, State Council for—created 194
Investments
Foreign investment clarification for insurers.....215(10)
Investment of hospital reserve funds 417
Investment of State/local funds in N.C. financial institutions 394
Iredell County
Building permit prohibition for those with delinquent taxes ..... 433(3a)–(3b)
Statesville, City of –*see* that heading
TANF electing county .....276(10.51b)
Troutman, Town of –*see* that heading

J

Jackson County
Cullowhee, Town of –*see* that heading
Hurricane recovery 1
Jackson County Airport Authority membership change ..... 219(19a)–(19b)
Macon-Jackson Regional Airport Authority created..... 219(1)–(18), (21)
Moratorium on airport hanger construction contract..... 203
Operations of some aircraft limited .....219(18)
Jacksonville, City of—abandoned/junk vehicles regulations in certain cities 25
Johnston County—delinquent property tax collection procedure..... 109
Jones County—education board vacancy..... 107
Judicial Campaign Act .....430(4)–(6)
Judicial Council, State—appointments and membership .....421(2.56)
Judicial Department
Appropriations
Current operations .....276(2.1); 345(1a)
Deputy clerk of court position..... 345(30a)–(30b)
Drug treatment court funds .....276(14.22); 345(29a)–(29b)
Mediation funds.....276(14.16)
Court fees and funds collection by electronic and online payment feasibility study.....276(14.5)
Employee salaries ..... 276(29.4c)–(29.4d)
Office equipment funds use .....276(14.4)
Office of Indigent Defense Services –*see* Indigent Defense Services, Office of
Reimbursement for use of personal vehicles.....276(14.21)
State match for grant funds.....276(14.6)
Worthless checks fund for office technology .....276(14.3)
Juries–*see* Courts

Justice, Department of
Appropriations
Current operations ..... 276(2.1)
Certain litigation expenses to be paid by client agencies/entities ..... 276(15.3)
Criminal records checks
Adoption ..... 114(1)–(3)
Archaeological permit applicants 367
County government 358
Fee adjustment study ..... 276(15.5b)
Long-term care facilities 4
Substance abuse professionals 431
DNA testing and analysis costs study ..... 276(15.8)
Rape kit backlog reduction ..... 276(15.7a)–(15.7c)
Reimbursement for UNC Board of Governors legal representation ..... 276(15.4)
SBI (State Bureau of Investigation) –*see* Law Enforcement
Seized and forfeited property use ..... 276(15.1a)–(15.1c)
State Bureau of Investigation (SBI) –*see* Law Enforcement
Statewide Automated Fingerprint Identification System replacement ..... 276(15.9a)–(15.9d)
Justus-Warren Heart Disease and Stroke Prevention Task Force–*see* Heart Disease and Stoke Prevention Task Force, Justus-Warren
Juvenile Code
Assessment responses in cases of reported abuse or neglect 55
Court custody order conversion to permanent custody order ..... 320(4)
Expedite outcomes in welfare and appeals cases 398
Guardian ad litem restrictions 398
Resolution of conflicting child custody orders ..... 320(1)
Technical corrections and conforming changes 320
Termination of jurisdiction over juvenile ..... 320(2)
Juvenile Facilities–*see* Correctional Institutions
Juvenile Justice Advisory Council--meetings ..... 276(16.12)
Juvenile Justice and Delinquency Prevention, Department of
Alternatives to juvenile commitment ..... 276(16.11a)–(16.11c)
Appropriations
Alternatives to juvenile commitment ..... 276(16.11a)–(16.11c)
Current operations ..... 276(2.1)
Federal funds use as State matching funds for Juvenile Accountability Incentive Block Grants ..... 276(16.5)
Gang violence prevention ..... 276(16.8a)–(16.8b)
Support Our Students ..... 276(5.1a), (5.1o)
Support Our Students administrative cost limits ..... 276(16.1)
Boys and Girls Clubs annual evaluation ..... 276(16.4)

Juvenile Justice and Delinquency Prevention, Department of—continued
Criminal record checks for employment ..... 114(4)
Eckerd and Camp Woodson wilderness camp program annual evaluation ..... 276(16.4)
Gang violence prevention ..... 276(16.8a)–(16.8b)
Governor's One-on-One program annual evaluation ..... 276(16.4)
Juvenile Crime Prevention Councils grant reporting and certification ..... 276(16.2a)–(16.2b)
Juvenile detention centers study ..... 276(16.9)
Multipurpose group homes annual evaluation ..... 276(16.4)
Save Our Students program annual evaluation ..... 276(16.4)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Secretary
Appointments –*see* that heading
Salary ..... 276(29.2)
Teen court program annual evaluation ..... 276(16.4)
Treatment staffing model at youth development centers ..... 276(16.6a)–(16.6b)
Youth development center construction ..... 276(16.10)

K

Kannapolis, City of—satellite annexation cap removed 173
Kenansville, Town of—ABC Board member increase 13
Kernersville, Town of
Delinquent storm water fee collection procedure for certain counties ..... 441(3a)–(3b)
Private sale of certain property ..... 433(7a)–(7c)
Kill Devil Hills, Town of
Assessments without petition 142
Unregistered all-terrain vehicle use ..... 305(1)
Kings Mountain, City of—ABC proceeds distribution 73
Kitty Hawk, Town of—unregistered all-terrain vehicle use ..... 305(1)
Knightdale, Town of—district engineer may sign voluntary annexation petition for right-of-way ..... 433(8a)–(8b)

L

Labor, Department of
Appropriations—current operations ..... 276(2.1)
Board of Boiler and Pressure Vessels Rules terms ..... 453(5)
Boiler act changes ..... 453(1)–(14)
Commissioner's salary ..... 276(29.1b)
Mine safety and education programs fee ..... 276(42.2a)–(42.2b); 345(48a)–(48b)

Labor, Department of—continued
Occupational Safety and Health Division
Name changed from Office of Occupational Safety and Health ... 133
Office of Occupational Safety and Health
Name change to Occupational Safety and Health Division ... 133
Passenger tramway safety enhancement ... 347
Wage and Hour Act enforcement clarification ... 453(23)
Wage complaint investigation authority ... 453(22)
Laboratories (*see also* Testing)
Agriculture regulatory fees ... 276(42.1a)–(42.1j)
Court assessment of fees for local government crime lab ... 363
DNA testing and analysis costs study ... 276(15.8)
Newborn screening fee ... 276(41.1a)–(41.1b)
Rape kit backlog reduction private entities ... 276(15.7a)–(15.7c)
State laboratories consolidation study ... 276(6.36a)–(6.36c); 345(4)
LaGrange, Town of—overgrown vegetation violators annual notice ... 308
Lake Gaston—aquatic weed control ... 276(30.3a)
Lakes and Rivers (*see also* particular lake or river; Water Resources)
Aquatic weed control ... 276(30.3a)
B. Everett Jordan water supply storage funds ... 276(30.3a)
Express DENR permit and certification reviews ... 276(12.2a)–(12.2d)
Flood control projects ... 276(30.3a)
Hurricane Isabel emergency stream cleanup in Northeastern NC ... 276(30.3a)
John H. Kerr Reservoir operations evaluation ... 276(30.3a)
Lower Lockwoods Folly River ... 276(30.3a)
Neuse River modeling/monitoring program reports amendment ... 386(2.1), (2.3)
Noxious aquatic weed control service district definition authority ... 440
Princeville flood control ... 276(30.3a)
Protection for North shore of Fontana Lake ... 97
Sedimentation education funds ... 276(12.3)
Stream clearing programs ... 441(1)–(2)
Swan Quarter flood control dykes ... 276(30.3a)
Tar River and Pamlico Sound feasibility study ... 276(30.3a)
Wetlands Restoration Program renamed Ecosystem Enhancement Program ... 386(3.1)–(3.6)
Landis, Town of—satellite annexation cap removed ... 173
Landlord and Tenant
Action for failure to pay rent ... 423(10)–(12)
Tenant rights under domestic violence statutes ... 423(5)–(7)

Landowners
Conservation easements ... 390
Conservation easements stewardship study ... 276(6.22)
Exclusive jurisdiction over land acquired by federal government limited ... 69
Hunting on private property prohibited without written permission in certain counties ... 264; 433(5)–(6)
Hunting regulation in Pitt County ... 42
Sedimentation control plan landowner's consent ... 386(7.1)
Languages—Community Colleges Office lead agency for workforce development and adult education ... 77(1)
Laurinburg, City of—convey property at private sale ... 6
Law Enforcement
Assault on an assistance animal ... 184
Campus Police Act ... 231
Certain civil claims allowed involving Highway Patrol officers ... 243
Concealed weapons carry by law enforcement ... 337
Disposition of unclaimed/seized/confiscated firearm ... 287
Election of sheriff according to general law in Beaufort County ... 263
Electronic surveillance orders ... 207
General Assembly police jurisdiction ... 359
Golf cart regulation in certain cities ... 11(1)
Highway Patrol
Motor carrier enforcement civilian inspection enforcement teams pilot program ... 276(28.24a)–(28.24b)
Motor carrier enforcement officer transitional training ... 276(28.13)
Indecent exposure sex offender registration ... 226
Interstate Compact for Juveniles ... 194
Law enforcement officers', firemen's, rescue squad workers', and civil air patrol member's death benefit extended ... 376
Motor vehicle laws apply on streets of Carolina Lakes Community in Harnett County ... 260
Notification to Winston-Salem police when providing on-site services within jurisdiction ... 110
Parking regulatory authority for NC A&T University ... 165
Police chief hiring for Monroe ... 17
Police information network fee ... 276(43.4a)–(43.4c)
Process and revocation order service for DMV ... 357
Rape kit backlog reduction ... 276(15.7a)–(15.7c)
Regulation in Seven Lakes community ... 11(2)
Sale of equipment to public safety employees on retirement for Raleigh ... 157(2)
SBI (State Bureau of Investigation)
Internet sex predators ... 121

Law Enforcement—continued
SBI (State Bureau of Investigation)—continued
Psuedoephedrine use in methamphetamine manufacturing study....434(8)
Rape kit backlog reduction private entities.... 276(15.7a)–(15.7c)
State laboratories consolidation study.... 276(6.36a)–(6.36c); 345(4)
Search warrants obtained by audio/video transmission.... 334
Seized and forfeited property use .... 276(15.1a)–(15.1c)
Seizure and destruction of firearm in Mecklenburg County 106
Sheriffs' Supplemental Pension Fund –*see* Retirement
Speed-measuring instrument accuracy testing 137
State Law Enforcement Officers' Retirement System –*see* Retirement
Traffic control cameras pilot program for Charlotte extension.... 27
Unregistered all-terrain vehicle use in certain cities ....305(1)
Yielding to emergency vehicles "Move-over Law" 189
Laws Amended or Repealed
1899 Private Laws
Chapter 163 61
1907 Private Laws
Chapter 147 199
1909 Private Laws
Chapter 158 ....141(1)
1915 Private Laws
Chapter 59 61
1933 Public-Local Laws
Chapter 399 140
1939 Public-Local Laws
Chapter 42 ....305(8a)
1949 Session Laws
Chapter 1169 13
Chapter 1184 .... 157(1)–(2)
1955 Session Laws
Chapter 1291 ....43(4)
1957 Session Laws
Chapter 1191 5
1961 Session Laws
Chapter 76 ....54(2)
Chapter 119 30
1967 Session Laws
Chapter 29 .... 305(9a)–(9b)
Chapter 1046 ....84(1)
1969 Session Laws
Chapter 832 73

Laws Amended or Repealed—continued

1971 Session Laws
Chapter 28 ..... 433(10.1)
Chapter 288 188
Chapter 335 105
Chapter 868 117
1973 Session Laws
Chapter 173 117
Chapter 349 107
Chapter 357 117
1977 Session Laws
Chapter 8 ..... 305(9a)–(9b)
Chapter 636 28
Chapter 816 117
1979 Session Laws
Chapter 501 ..... 54(1a)
Chapter 1197 14
1981 Session Laws (Regular Session 1982)
Chapter 1194 ..... 276(28.14a)
1983 Session Laws
Chapter 830 ..... 276(43.3a)
Chapter 908 ..... 276(33.26)–(33.30)
1985 Session Laws
Chapter 51 117
Chapter 108 262
Chapter 292 5
Chapter 449 ..... 276(33.28)
1985 Session Laws (Regular Session 1986)
Chapter 826 ..... 276(33.28)
Chapter 838 14
Chapter 868 ..... 433(5a)
Chapter 890 262
Chapter 908 172
1987 Session Laws
Chapter 175 ..... 16(1)
Chapter 377 ..... 46(1.1); 53
Chapter 789 172
Chapter 801 117
1987 Session Laws (Regular Session 1988)
Chapter 939 ..... 305(6a)
1989 Session Laws
Chapter 511 117
Chapter 611 265
1989 Session Laws (Regular Session 1990)
Chapter 821 ..... 276(33.26)–(33.30)
Chapter 874 117
Chapter 884 ..... 141(1)
Chapter 1046 14

Laws Amended or Repealed—continued
1991 Session Laws
Chapter 177 ..... 276(33.28)
Chapter 312 ..... 157(1)–(2)
Chapter 322 ..... 233(5)
Chapter 372 ..... 305(3)
Chapter 392 ..... 306(1b)
Chapter 594 ..... 276(33.30)
1991 Session Laws (Regular Session 1992)
Chapter 776 ..... 305(3)
1993 Session Laws
Chapter 87 ..... 276(9.26b)
Chapter 221 15
Chapter 413 ..... 276(33.27)
Chapter 449 ..... 276(33.29)
1993 Session Laws (Regular Session 1994)
Chapter 649 ..... 157(1)–(2)
Chapter 657 ..... 433(1a)
1995 Session Laws
Chapter 52 ..... 233(5)
Chapter 80 309
Chapter 323 ..... 157(1)–(2)
Chapter 324 ..... 276(10.50)
Chapter 339 ..... 306(1b)
Chapter 507 ..... 276(10.50)
1995 Session Laws (Regular Session 1996)
Chapter 600 258
1997 Session Laws
Chapter 22 ..... 219(19a)
Chapter 102 118
Chapter 248 263
Chapter 410 ..... 433(1a)
Chapter 414 200
Chapter 420 ..... 305(5)
Chapter 443 ..... 70(2); 276(12.7a)
1997 Session Laws (Regular Session 1998)
Chapter 113 ..... 245(1)
Chapter 192 89
Chapter 212 ..... 144(7A.1), (7A.2)
Chapter 217 ..... 144(7A.2), (7A.3)
1999 Session Laws
Chapter 58 ..... 81; 202
Chapter 241 ..... 305(2)
Chapter 321 ..... 276(8.8a)
Chapter 329 ..... 276(12.7a)–(12.7b)
1999 Session Laws (Regular Session 2000)
Chapter 3 ..... 276(9.13a)–(9.13f)
Chapter 31 258

Laws Amended or Repealed—continued
1999 Session Laws (Regular Session 2000)—continued
Chapter 33 ..... 81; 202
Chapter 35 17
Chapter 38 202
Chapter 65 ..... 158(2)
Chapter 120 ..... 276(33.24)
2001 Session Laws
Chapter 12 21
Chapter 65 ..... 433(4)
Chapter 107 ..... 81; 202
Chapter 234 ..... 70(2)
Chapter 240 ..... 213(1)
Chapter 254 ..... 276(12.7a)–(12.7b)
Chapter 347 ..... 276(33.26)–(33.30), (33.27), (33.28), (33.29), (33.30), (33.31)
Chapter 381 120
Chapter 424 ..... 144(7A.4), (9.1); 276(6.18a), (8.8a), (33.1)
Chapter 425 ..... 174(2a)
Chapter 437 ..... 276(10.27)
Chapter 480 ..... 233(4.1)–(4.2)
Chapter 485 117
Chapter 496 300
2001 Session Laws (Regular Session 2002)
Chapter 33 12
Chapter 36 ..... 233(4.1)–(4.2)
Chapter 75 196
Chapter 85 258
Chapter 126 ..... 144(8.1); 276(10.27)
Chapter 142 42
Chapter 176 ..... 276(12.7a)–(12.7b)
2003 Session Laws
Chapter 6 21
Chapter 49 ..... 158(1)–(2)
Chapter 73 57
Chapter 77 81
Chapter 80 ..... 81; 202
Chapter 280 27
Chapter 284 ..... 144(8.1)–(9.1); 276(10.27), (33.1), (33.24)
Chapter 326 ..... 116(2)
Chapter 340 ..... 276(12.7a)–(12.7b)
Chapter 352 ..... 365(2)
Chapter 380 27
Chapter 416 ..... 276(33.31)

Laws Amended or Repealed—continued
2003 Session Laws (Regular Session 2004)
Chapter 2 ..... 70(2)
Chapter 28 258
Chapter 30 24
Chapter 60 ..... 433(6a)
Chapter 78 ..... 276(29.30Ba)–(29.30Bb)
Chapter 104 ..... 47; 90
Chapter 108 ..... 305(1)
Chapter 123 ..... 276(33.33)
Chapter 124 ..... 18; 144(7A.1), (7A.2), (7A.4); 276(22.3), (29.32); 365(2)
Chapter 158 ..... 421(2.10), (2.17), (2.56), (2.57), (2.60)
Chapter 162 ..... 124(5)
Chapter 163 ..... 386(1.10)
Chapter 170 ..... 144(8.1), (8.2)
Chapter 179 ..... 276(9.18)
Chapter 187 ..... 455(1.19)
Chapter 189 ..... 276(44.1q)
Chapter 199 ..... 280; 289(2)
Chapter 217 ..... 144(7A.3)
2005 Session Laws
Chapter 19 ..... 168; 372(1)
Chapter 47 90
Chapter 81 202
Chapter 99 ..... 276(44.1r)
Chapter 144 ..... 201; 246; 276(28.17), (33.1)
Chapter 168 ..... 372(1)
Chapter 201 ..... 246; 276(28.17)
Chapter 237 ..... 276(23A.1a)
Chapter 239 ..... 372(1)
Chapter 267 ..... 415(1.1)
Chapter 275 ..... 382(3)
Chapter 276 ..... 276(33.3); 345
Chapter 344 ..... 276(31.1a)–(31.1ii)
Chapter 455 ..... 276(12.4a), (12.4c)
Leasing
Notification for termination of rental space for manufactured homes 291
Rutherford Airport Authority property lease 105
Vacation rental home agreements 292
Lee County
Broadway, Town of –*see* that heading
Public-private reimbursement agreements for infrastructure development 41
Sanford, City of –*see* that heading

Legislative Research Commission
Horace Williams Airport operation and study ..... 276(9.15)
School-linked health centers study ..... 276(10.59Ga)–(10.59Gc)
Leland, Town of
Exempt from ABC store location requirements ..... 305(3)
Overgrown vegetation violators annual notice 81
Lenoir County
Building permit prohibition for those with delinquent taxes ..... 433(3a)–(3b)
Grifton, Town of –*see* that heading
LaGrange, Town of –*see* that heading
TANF electing county ..... 276(10.51b)
LEP (Limited English Proficiency)–*see* Education
Liability
Agritourism liability limits 236
Emergency services volunteer liability immunity 273
Hold harmless provisions for shipper negligence void 185
Manufacturing redevelopment districts 462
Medical liability coverage for certain department employees ..... 276(10.7a)–(10.7c)
Public Transportation Authorities treated as cities for purposes of civil liability 160
Stream clearing programs ..... 441(1)–(2)
Libraries
Bethel Public Library ..... 345(34)
North Carolina libraries special plate ..... 216(3)–(7)
License Plates
Air medal recipient special plate ..... 216(3)–(7)
Alpha Phi Alpha Fraternity special plate ..... 216(3)–(7)
Aquarium Society special plate ..... 216(1)
ARC of North Carolina special plate ..... 216(3)–(7)
Audit of vehicle registration under International Registration Plan ..... 435(22)
Autism Society of North Carolina special plate ..... 216(3)–(7)
Buddy Pelletier Surfing Foundation special plate ..... 216(1), (3)–(7)
Coastal Conservation Association special plate ..... 216(3)–(7)
Cold War Veteran special plate ..... 216(3)–(7)
Corvett Club special plate ..... 216(3)–(7)
First in Forestry special plate ..... 216(1)
Guilford Battlefield Company special plate ..... 216(1), (3)–(7)
Harley Owners' Group special plate ..... 216(3)–(7)
Libraries special plate ..... 216(3)–(7)
Marine Corps League special plate ..... 216(3)–(7)
Multiple Sclerosis Society special plate ..... 216(3)–(7)
Private plates on public vehicles repealed ..... 276(6.18a)–(6.18b)
Registration fees increase ..... 276(44.1i)–(44.1n)

License Plates—continued
Registration renewal and property tax collection system ... 294
Return of ineligible plate ... 216(2)
SCUBA special plate ... 216(3)–(7)
Shag dancing special plate ... 216(3)–(7)
Share the road special plate ... 216(3)–(7)
Tarheel Classic Thunderbird Club special plate ... 216(3)–(7)
Tax year modification ... 313(8)–(9)
Trademark/logo use on special plates ... 216(2)
Trout Unlimited special plate ... 216(1), (3)–(7)
Turkey Federation special plate ... 216(3)–(7)
Watermelon special plate ... 216(3)–(7)
Wild Turkey Federation special plate ... 216(1)
Wildlife Habitat Foundation special plate ... 216(1), (3)–(7)
License to Give Trust Fund Commission—appointments and membership ... 421(1.25), (2.29)
Licenses and Permits
Adult assisted living communities licensure category ... 66
Agriculture regulatory fees ... 276(42.1a)–(42.1j)
Alcoholic beverage container recycling by some permit holders ... 348(1)–(2)
Alcoholic beverage sales in major league sports facilities ... 327(4)
Animal shelter euthanasia regulation ... 345(22)
Beer and wine sales at certain university and county facilities ... 327(1)–(3)
Building permit prohibition for those with delinquent taxes in certain counties ... 433(3a)–(3b)
Child care facilities licensure strengthening ... 36
Closing-out sale license issuance in Greensboro ... 12
Coastal recreational fishing license
Funds ... 276(12.4a)–(12.4c)
Implementation ... 455(1.1)–(1.5)
Concealed handgun permit
Domestic violence victims ... 343
Renewal extension for military personnel ... 232
Disabled sportsman program fees ... 438(3)
Distributer license requirements Motor fuel importer ... 435(9)
Division of Facility Services fees ... 276(41.2a)–(41.2k)
Dyed fuel distributors ... 435(20)
Express DENR permit and certification reviews ... 276(12.2a)–(12.2d)
Failure to obtain a motor fuel license ... 435(1)
House mover regulation ... 354
Hunting and fishing licenses unified ... 455(1.16)
Hunting and fishing on tribal lands by tribal members without a license ... 285
Hunting licensure and education requirements for those under 16 ... 438(1)–(2)

Licenses and Permits—continued
Inland fishing licenses ..... 455(1.6)–(1.15)
Kerosene supplier letter of credit in lieu of bond ..... 435(21)
Licensed insurance company fees consolidation ..... 424(1.1)–(1.6)
Licensing fees for manufactured home businesses 297
Managed hunts minors licensing requirements 82
Motor carrier fees increase ..... 276(44.1p)
Motor fuel licenses ..... 435(10)–(11)
Motor vehicle dealer
Fees increase ..... 276(44.1o)
Representative license display ..... 276(44.1r)
Oath of statutory compliance required of all insurers ..... 215(1)
Oversize/overweight vehicles 361
Private protective service employees concealed handgun requirements ..... 211(2)
Proprietary school licensing fee increase ..... 276(8.14)
Record checks for archaeological permit applicants 367
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ..... 276(10.40Aa)–(10.40Ar)
Residential treatment facility licensure ..... 276(10.40a)–(10.40b)
Revocation of ABC permits 392
Statistical organization licensing 210
Strengthen building permit issuance requirements ..... 276(21.2)
Supplemental licensing eliminated for manufactured home businesses 297
Transporting alcoholic beverages without a permit 335
Wildlife Resources Commission license agents ..... 455(3.1)–(3.3)
Wine shipper permit fee repealed ..... 380(1)–(2)
Wine shop permit ..... 350(2a)–(2c)
Wine tasting permit
Requirements ..... 350(1)
Viticulture/enology programs ..... 350(3a)–(3b)
Licensing and Certification
Acupuncture
Clarify renewal, lapsed, suspended and other licenses ..... 379(2)
Continuing education clarification ..... 379(4)
Licensure fees ..... 379(3)
Auctioneer clarifications 330
Bail bondsmen denial of license review 240
Certified criminal justice addictions professional 431
Exemptions from well contractors certification ..... 386(9)
General contractors
Cost recovery for investigation of violations of licensure ..... 381(4)–(5)
Fees increase ..... 381(1)–(3)

Licensing and Certification—continued
Interpreters and transliterators
Civil penalties....299(3)–(4)
Exemption....299(1)
Land surveyor licensure requirements....296
Lateral entry provisional teacher certificate....198(1)
Lateral entry teacher certification training programs....198(2)–(4)
Limited loan officer licensure....316(1)–(5)
Medical Board fees increase....402(5)–(6)
Mortgage lending licensee/applicant action for falsifying continuing education....316(7)
Motor vehicle dealer technical corrections....99
Nurses continuing competency licensing requirement....186
Occupational therapy licensure requirements....432(5)–(11)
Perfusionist licensure....267
Pharmacist licensure renewal....402(4)
Plumbing and heating contractors....131
Probationary and registered regular private protective service employees....211(1)
Professional Employer Organizations....124
Professional licensing processes expedited for military spouses....445(2.1)–(2.2b)
Provisional licenses for interpreters and transliterators....299(2)
Real estate licensure changes....395
Recreational therapy licensure....378
School administrator certification clarification....179
Setting/raising pharmacy licensure fees....402(2)–(3)
State/federal authorities notification of occupational therapy licensing disciplinary actions....432(4)
Student behavior management training for teachers....205(3)–(4)
Substance abuse professionals....431
Teacher assistants may work while completing student teaching....302
Third-party licensure testing for Dental Board....366(1)–(2)
Liens–*see* Debtor and Creditor
Lieutenant Governor, Office of the
Appropriations--current operations....276(2.1)
Legislative branch lobbying....456(1)
Salary....276(29.1b)
Limited English Proficiency (LEP)–*see* Education
Lincoln County—TANF electing county....276(10.51b)
Livestock and Poultry
Agriculture regulatory fees....276(42.1a)–(42.1j)
Cockfighting penalty increase....437
Contagious animal disease provisions sunset extension....21
Loans (*see also* Financial Services)
Certain subordination agreements validated....212(1)

Loans (*see also* Financial Services)—continued
Common criteria for Wastewater Reserve and Drinking Water Reserve ..... 454(3)
Home protection pilot program and loan fund expansion ..... 276(20.2a)–(20.2f)
Microenterprise loan program funds ..... 276(13.11e)
Mortgage guarantee insurers report of policyholders position ..... 215(11)–(12)
Satisfaction and cancellation of mortgages and deeds of trust 123
Uniform Residential Mortgage Satisfaction Act adoption 123
Lobbying
Executive branch lobbying regulation ..... 456(2)
Legislative branch changes ..... 456(1)
Lobbyist electronic report filing ..... 456(4)
Lobbyist registration ..... 456(1)
Lobbyist reporting requirements ..... 456(1)
No gifts registry ..... 456(3)
Restrictions on former governors, Council of State members, agency heads, and legislators ..... 456(1)
Local Government (*see also* Counties; Municipalities; Planning and Zoning; Tribal Government)
Cap on amount charged for 911 ..... 439(10)
Comment period requirement for certain local boards and councils 170
Conflict of interest policy for State grant recipients ..... 276(6.9a)–(6.9c)
Councils of Government
May acquire real property 290
Funds ..... 276(13.2a)–(13.2e)
Court assessment of fees for local government crime lab 363
Distressed areas demonstration grants ..... 276(5.2f)
Economic development public records laws clarification 429
Forestry activity regulation clarification 447
Investment of State/local funds in N.C. financial institutions 394
Local medical examiner investigation fees 368
Mental health crisis response services ..... 371(1)–(2)
Metropolitan planning organization representation on regional transportation authority boards 322
Municipal/county planning and land use statute modernization and simplification 426
No tax debts for State grant recipients ..... 276(6.9a)–(6.9c)
Public/private ventures funds ..... 276(13.12a)
Satellite broadcast services sales and use tax ..... 276(33.23)
Sludge management contracts 176
Solicitation on State highways restriction/prohibition 310
Stream clearing programs ..... 441(1)–(2)

Local Government Commission
Appointments and membership ..... 421(1.26), (2.30)
Bond net interest calculation method ..... 238(8)
School internal controls review fraud incidents ..... 276(7.58)
Technical corrections and conforming changes ..... 454(10)
Local Government Employees Retirement System (LGERS)–*see* Retirement
Local Health Department Accreditation Board—created ..... 369(1b)
Locksmith Licensing Board—appointments and membership ..... 421(1.27), (2.31)
Long-Term Care Facilities–*see* Nursing Homes
Lottery–*see* Gaming
Lottery Commission, State
Appointments and membership ..... 276(31.1d)–(31.1e)
Created 344
Criminal records checks ..... 276(31.1f), (31.1w); 344(6)
Louisburg, Town of—abandoned/junk vehicles 10

M

Macon County
Highlands, Town of –*see* that heading
Hurricane recovery 1
Macon-Jackson Regional Airport Authority created ..... 219(1)–(18), (21)
Operations of some aircraft limited ..... 219(18)
TANF electing county ..... 276(10.51b)
Madison County
Hurricane recovery 1
Occupancy tax 118
Maggie Valley, Town of—satellite annexation restrictions removed 79
Manufactured Homes–*see* Housing
Manufactured Housing Board
Appointments and membership ..... 451(3)
Licensing fees 297
Supplemental licensing eliminated 297
Manufacturing–*see* Corporations, For-Profit
Marine Fisheries Commission
Coastal recreational fishing license implementation ..... 455(1.1)–(1.5)
Marine Resources Fund and Marine Resources Endowment Fund disbursement ..... 455(2.1)–(2.10)
Marketing–*see* Advertising
Marriage and Family
Adoption –*see* that heading
Child abuse –*see* Minors
Child custody –*see* Minors
Child support –*see* Minors

Marriage and Family—continued
District Court judge allowed to perform ceremonies 56
Divorce –*see* that heading
Family law arbitration amendments 187
Guardian ad litem restrictions 398
Intensive family preservation services enhancements ..... 276(10.51Aa)–(10.51Ad)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Martin County
Indigent defense positions ..... 345(28)
Water/wastewater project funds ..... 276(13.11b)
Massage and Bodywork Therapy, Board of—community college programs exempt from licensure ..... 276(8.15a)
Massage Therapy—community college massage and bodywork therapy programs exempt from licensure ..... 276(8.15a)
Matthews, Town of
Abandoned/junk vehicles regulations 24
Nuisance ordinance chronic violators notification 44
Tree planting and removal ordinances authorized ..... 305(5)
McDowell County
Divide District Court district 29 ..... 276(14.2f)–(14.2k)
Divide prosecutorial district 29 ..... 276(14.2l)–(14.2q)
Hurricane recovery 1
Superior Court District 29 divided ..... 276(14.2a)–(14.2e2)
TANF electing county ..... 276(10.51b)
Mecklenburg County
Charlotte, City of –*see* that heading
Drug treatment court funds ..... 345(29b)
Hurricane recovery 1
Juvenile detention centers study ..... 276(16.9)
Matthews, Town of –*see* that heading
Moving ahead transportation projects ..... 276(28.23c)
NASCAR Hall of Fame 68
Occupancy tax ..... 68; 276(33.26)
Pineville, Town of –*see* that heading
Private sale of certain property sunset repealed 158
Seizure and destruction of firearm 106
Mediation and Arbitration
Custody/visitation mediation when couple not married ..... 423(4)
Family law amendments 187
Inadmissibility of statements from conferences ..... 167(1), (3)
Mediation for disputes between EMCs and other electricity suppliers ..... 150(8)
Regulation of mediators ..... 167(2), (4)
Superior court clerk may order mediation 67
Supplying electricity to area outside corporate limits ..... 150(3)

Medicaid

Community alternative programs reimbursement system study ..... 276(10.20a)–(10.20b)
Community Care of N.C. expanded ..... 276(10.17a)–(10.17e)
Consent to release of medical records to combat fraud ..... 276(10.11x)
Co-payment ..... 276(10.11c)
Cost-containment
Activities ..... 276(10.14)
Programs ..... 276(10.11j)
County cost share ..... 276(10.13a)–(10.13b)
DDA group home funding ..... 276(10.19Aa)–(10.19Ab)
Dental coverage limits ..... 276(10.11g)
Disproportionate share receipts disposition ..... 276(10.12a)–(10.12b)
Elderly, blind, disabled coverage ..... 276(10.11e)
Electronic quality prescription management program implementation ..... 276(10.19B)
Eligibility classifications ..... 276(10.11k)
Emergency and temporary rules to maximize federal funds receipts ..... 276(10.11q)
Equity value using SSI method mitigation ..... 276(10.11u)
Estate recovery to include real property liens ..... 276(10.21Ca)–(10.21Cc); 345(16)
Expenditures and allocations ..... 276(10.11a)
Family planning services coverage ..... 276(10.11s)
Federal transfer of assets policies for determining eligibility ..... 276(10.11t)
Fraud recovery incentives ..... 276(10.11o)
ICF and ICF/MR work incentive allowances ..... 276(10.11f)
Information system enhancement funds ..... 276(10.11p)
Medicaid prior authorization for antihemophilic drugs exemption extended 83
Medicaid/Medicare dual eligibility study ..... 276(10.21E)
Medical coverage policy development ..... 276(10.11w)
NC Health Choice
Prescription drug payments ..... 276(10.22d)
Services to children ..... 276(10.22a)–(10.22c)
Needy families with children enrollment ..... 276(10.11n)
No change in medical policy unless fiscal analysis documenting cost ..... 276(10.11v)
Nonfederal cost allocation ..... 276(10.11b)
Opportunity for comment on medications restrictions ..... 276(10.11y)
Personal care services limitations ..... 276(10.19a)–(10.19b)
Pregnant women and children coverage ..... 276(10.11m)
Private vendor billing system authorized ..... 459(1)
Reports –*see* that heading
Reserve fund transfer ..... 276(10.15)

Medicaid—continued
Service limitation exceptions....276(10.11h)
Services to 19-21 year olds....276(10.11l)
State residency verification....276(10.21Aa)–(10.21Ab)
Ticket to Work Medicaid buy-in....276(10.18a)–(10.18c)
Volume purchase plans and single source procurement....276(10.11i)
Work First family assistance....276(10.11d)
Medical Board
Fees increase....402(5)–(6)
Perfusionist Advisory Committee –*see* that heading
Medical Care Commission
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services....276(10.40Aa)–(10.40Ar)
Technical corrections and conforming changes....276(10.42)
Medical Examiner
Autopsy photos not public record....393
Fees paid for investigations....368
Medicare
Brody School of Medicine Medicare receipts
Medicare receipts....276(9.26a)
Medicaid/Medicare dual eligibility study....276(10.21E)
Medicare lookout program coordinator position....424(2)
Prescription drug plan enrollment....276(10.4b)
Retroactive eligibility decision....223(6)
Mental Health
Accreditation of residential treatment facilities feasibility study....276(10.35Aa)–(10.35Ab)
Appeals process for mh,dd,sas clients....276(10.35a)–(10.35b)
Autism Society of North Carolina special plate....216(3)–(7)
Block grant funds....276(5.1a)
Community mh,dd,sas delivery procedures....276(10.31)
Community-based services funds....276(5.1a)
Comprehensive treatment services program for children continuation....276(10.25a)–(10.25m)
Controlled substances reporting....276(10.36a)–(10.36c); 345(17)
Coordination of children's services study....276(10.25i)–(10.25m)
Crisis response services....371(1)–(2)
DDA group home funding....276(10.19Aa)–(10.19Ab)
Involuntary commitment
Affidavit filing....135
Mental health facilities listing....371(1)
Long term plan for meeting mh,dd,sas needs....276(10.24a)–(10.24c)
Medicaid cost share....276(10.13a)

Mental Health—continued
Mental health consumer advocacy program contingent on appropriations ..... 276(10.27)
Mental retardation centers downsizing ..... 276(10.29a)–(10.29d)
Oversight and monitoring of mental health services study ..... 276(10.34)
Private agency uniform cost-finding requirement ..... 276(10.30)
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ..... 276(10.40Aa)–(10.40Ar)
Residential treatment facility licensure ..... 276(10.40a)–(10.40b)
Residential treatment of children rules ..... 276(10.35B)
Services to multiply diagnosed adults ..... 276(10.26a)–(10.26d)
State psychiatric hospitals transition planning ..... 276(10.28a)–(10.28d)
Mental Health, Developmental Disabilities, and Substance Abuse Services, Commission for
Alcohol and drug education traffic school class size and hours rules ..... 312(3)
Appeals process for mh,dd,sas clients ..... 276(10.35a)–(10.35b)
Appointments and membership ..... 421(1.28), (2.32)
Controlled substances reporting ..... 276(10.36a)–(10.36c)
Early intervention program rules ..... 276(10.54A)
Mental Health, Developmental Disabilities, and Substance Abuse Services, Legislative Oversight Committee on
Opportunity for comment on medications restrictions for Medicaid ..... 276(10.11y)
Oversight and monitoring of mental health services study ..... 276(10.34)
Mental Health, Developmental Disabilities, and Substance Abuse Services, Commission for
Referrals to provider agencies conflict of interest rules ..... 276(10.33)
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ..... 276(10.40Aa)–(10.40Ar)
Methamphetamine Abuse, Legislative Commission on—created ..... 434(7)
Methamphetamine Lab Prevention Act 434
Military Bases–*see* Armed Forces
Mills River, Town of—amend budget ordinances 34
Mining—mine safety and education programs fee ..... 276(42.2a)–(42.2b); 345(48a)–(48b)
Minorities (*see also* Tribal Government)
Charlotte Hawkins Brown State Historic Site capital funds ..... 276(30.6b)
Historically underutilized business certification 270
Involvement of historically underutilized businesses in hurricane recovery ..... 1(5.8)

Minorities (*see also* Tribal Government)—continued
Minority recruitment to pharmacy schools pilot program....276(10.59B)
UNC-Pembroke North Carolina's historically American Indian university.... 153
Minors
Abstinence Until Marriage Education Program funds .... 276(5.1aa)
After-school programs/services for at-risk children....276(5.1q)
All terrain vehicle regulation.... 282
Baby-sitting service prohibited by sex offender or with sex offender on premises....416(4)
Boys and Girls Clubs
Annual evaluation ....276(16.4)
Block grant....276(5.1a)
Carolinas Concert Assoc. grant in aid ....345(33)
Child abuse
Assessment responses 55
Expedite outcomes for child/family in welfare and appeals cases 398
Responsible individuals list creation.... 399
Child care –*see* Day Care
Child custody
Court custody order conversion to permanent custody order....320(4)
Custody/visitation mediation when couple not married ....423(4)
Expedite outcomes for child/family in welfare and appeals cases 398
Parenting coordinators.... 228
Resolution of conflicting orders....320(1)
Termination of parental rights for parent who murdered the other parent 146
Child support enforcement 389
Children services work group....276(10.25h)
Children with disabilities funds....276(7.12)
Child's allowance from estate clarification.... 225
Comprehensive treatment services program for children continuation....276(10.25a)–(10.25m)
Coordination of services study ....276(10.25i)–(10.25m)
Driving eligibility certificates....276(7.18)
Early intervention reporting and evaluation .... 276(10.54a)–(10.54c)
Eckerd and Camp Woodson wilderness camp program annual evaluation ....276(16.4)
Exemptions from Wage and Hour Act expanded....453(15)
Gang violence prevention .... 276(16.8a)–(16.8b)
Governor's One-on-One program annual evaluation....276(16.4)
Governor's vision care program created ....276(10.59Fa)–(10.59Fh); 345(20a)–(20d)

Minors—continued
Hunting licensure and education requirements for those under 16 ... 438(1)–(2)
Immunization programs funds ... 276(10.58a)–(10.58b)
Indecent exposure ... 226
Intensive family preservation services enhancements ... 276(10.51Aa)–(10.51Ad)
Internet sex predators ... 121
Interstate Compact for Juveniles ... 194
Juvenile Code –*see* that heading
Juvenile recidivism study ... 276(14.19a)–(14.19c)
Medical Child Care Pilot funds ... 276(5.1k)
Multiple response system ... 276(10.45a)–(10.45b)
Multipurpose group homes annual evaluation ... 276(16.4)
NC Health Choice services to children ... 276(10.22a)–(10.22c)
Newborn Screening Program
Fee ... 276(41.1a)–(41.1b)
Testing follow-ups ... 276(5.1bb)
Personal watercraft operator minimum age ... 161
Residential treatment of children rules ... 276(10.35B)
Save Our Students program annual evaluation ... 276(16.4)
School-based child and family team initiative collaboration ... 276(6.24a)–(6.24f)
Students –*see* that heading
Support Our Students administrative cost limits ... 276(16.1)
Tarheel Challenge Program annual evaluation ... 276(18.1)
Teen court program annual evaluation ... 276(16.4)
Mitchell County
Bakersville, Town of –*see* that heading
Hurricane recovery ... 1
Monroe, City of
Food and beverage tax ... 261
Police chief hiring ... 17
Montgomery County—Seagrove designated birthplace of North Carolina pottery ... 78
Moore County
Motor vehicle regulation in Seven Lakes community ... 11(2)
Seagrove designated birthplace of North Carolina pottery ... 78
Moratoriums
Annexations into Cabarrus County by municipalities outside the county ... 116(2)
Jackson County Airport hanger construction contract ... 203
More At Four Program–*see* Health and Human Services, Department of (DHHS)
Morehead City, City of
Overgrown vegetation violators annual notice ... 175
Ports capital appropriation ... 276(30.2)
Repair or demolition of dwellings unfit for habitation ... 305(12a)–(12b)

Mortgages–*see* Loans
Motor Vehicle Reinsurance Facility, Board of Governors—appointments and membership 242
Motor Vehicle Repair Act ..... 463(1)
Motor Vehicle Violations and Infractions (*see also* Crimes; Driving While Impaired (DWI))
Alcohol and drug education traffic schools
Class size and hours rules ..... 312(3)
Fees ..... 312(1)
Instructor qualifications ..... 312(2)
Outcomes evaluation study ..... 312(4)
All terrain vehicle regulation 282
Passing certain stopped buses penalty increased 204
Speeding to elude arrest resulting in death 341
Yielding to emergency vehicles "Move-over Law" 189
Motor Vehicles
Abandoned/junk vehicles regulations in certain cities 10; 24; 25
Advanced Vehicular Research Center ..... 276(13.8Aa)–(13.8Af)
All terrain vehicle regulation 282
Captive finance ..... 409(3)
Dealer franchise clarification 409
Failure to return hired motor vehicle a felony 182
Golf cart regulation in certain cities 58
Highway use tax excluded in motor vehicle valuation 303
Laws apply on streets of Carolina Lakes Community in Harnett County 260
Leaving the scene of an accident by driver or passenger unlawful 460
Maximum weight for vehicles subject to Warranties Act ..... 436(1)
Mercury switch recovery 384
Motor carrier fees increase ..... 276(44.1p)
Motor vehicle dealer
Fees increase ..... 276(44.1o)
Licensing technical corrections 99
Representative license display ..... 276(44.1r)
Oversize/overweight vehicles 361
Possession of lock-picking devices regulated 352
Prohibited landfill items 362
Red and blue light restrictions 152
Registration fees increase ..... 276(44.1i)–(44.1n)
Regulation in Seven Lakes community ..... 11(2)
Reimbursement for use of personal vehicles by Judicial Department ..... 276(14.21)
Relocation of dealership without notification or hearing ..... 463(2)
Repair act clarification ..... 463(1)
State employee vehicle use report change ..... 386(2.2)

Motor Vehicles—continued
State motor vehicle fleet alternative fuel, synthetic lubricant, efficient vehicle plans ..... 276(19.5a)–(19.5c)
Tarheel Classic Thunderbird Club special plate ..... 216(3)–(7)
Towing of disabled vehicle up to 50 miles 248
Traffic law enforcement –*see* Law Enforcement
Unregistered all-terrain vehicle use in certain cities ..... 305(1)
Warranties consumer repurchase request ..... 436(2)
Written estimate requirement for motor vehicle repair 304
Yielding to emergency vehicles "Move-over Law" 189
Motor Vehicles, Division of (*see also* Transportation, Department of)
Commissioner's salary ..... 276(29.3)
Energy credits program participation ..... 413(2)
License Plates –*see* that heading
Online dealer registration enhancement study ..... 276(28.22a)–(28.22b)
Process and revocation order service by law enforcement 357
Public transportation operator positive drug test notification 156
Purchase of alternative-fueled vehicles with energy credit program funds ..... 413(3)
Registration renewal and property tax collection system 294
Move-Over Law 189
Municipalities (*see also* Annexation; Planning and Zoning)
Abandoned/junk vehicles regulations in certain cities 10; 24; 25
Amend budget ordinances for certain cities 34
Bid deposit bond not mandatory ..... 238(7)
Board of adjustment ..... 418(8)
Bond bid deposit not mandatory ..... 238(8)
Bond refunding process ..... 238(3)
Clean water revolving loans and grants encumbered by real/personal property ..... 238(11)
Closed correctional facilities use ..... 276(17.5)
Comment period requirement for city council meetings ..... 170(2)
Conditioning services on electric service ..... 150(1)
Conflict of interest policy for State grant recipients ..... 276(6.9a)–(6.9c)
Counties may Exercise some powers of municipality when no municipality primarily with its borders ..... 433(10a)–(10c)
Delinquent storm water fee collection procedure for certain counties ..... 441(3a)–(3b)
Destruction of cancelled bonds ..... 238(9)
Development financing districts ..... 238(1), (5), (12)
Development financing specific pledge of revenues ..... 238(6)
EMC limits on supplying electricity within city ..... 150(6)–(7)
Encumbering of real property by local government ..... 238(4)
Enhanced voluntary agricultural districts 390

Municipalities (*see also* Annexation; Planning and Zoning)—continued
Finance officer performance bond increase....238(2)
Forestry activity regulation clarification 447
General obligation bonds no split coupon bonds....238(7)
Golf cart regulation in certain cities ....11(1); 58
Industrial/commercial park interlocal agreement period increased.... 72
Local government property electronic purchase and sale 227
Malt beverage permit elections for cities with railroad terminus.... 336
Merger of hospital authorities and/or charitable/religious hospital 449
Metropolitan planning organization representation on regional transportation authority boards.... 322
Municipal/county planning and land use statute modernization and simplification.... 426
Museums are special purpose project for bond issuance....238(10)
No tax debts for State grant recipients.... 276(6.9a)–(6.9c)
Overgrown vegetation violators annual notice for certain cities....45; 81; 175; 202; 308
Payment of taxes by offset.... 134
Planning board review ....418(7)
Planning ordinances technical and clarifying changes 418
Planning protest petitions ....418(5)–(6)
Preliminary plat approval ....418(2)–(3)
Project development financing for tourism projects.... 407
Public-private reimbursement agreements for infrastructure development.... 41
Repair or demolition of dwellings unfit for habitation in certain cities....200; 305(12a)–(12b)
Revenue bonds for water treatment facilities 249
Sales and use tax local distribution....276(33.19)
Satellite annexation cap removed for certain cities 71; 173
State land subject to municipal planning jurisdiction repealed 280
State street/highway annual municipal work plans ....382(2)
Supplying electricity to area outside corporate limits ....150(3)
Swift Creek Management Plan enforcement 89
Unified development ordinance....418(1)
Unregistered all-terrain vehicle use in certain cities ....305(1)
Vehicle tax for certain municipalities.... 116(1a)–(1b); 306
Zoning amendment notice ....418(4)
Museum of Art Board of Trustees
Appointments and membership ....421(1.29), (2.33)
Appropriations—capital funds ....276(30.2)
Director's salary ....276(29.3)

Museums (*see also* Zoos and Aquariums)
Aurora Fossil Museum grassroots science program grant-in-aid ..... 276(12.5a)
Cape Fear Museum grassroots science program grant-in-aid ..... 276(12.5a)
Carolina Raptor Center grassroots science program grant-in-aid ..... 276(12.5a)
Catawba Science Center grassroots science program grant-in-aid ..... 276(12.5a)
Colburn Gem and Mineral Museum grassroots science program grant-in-aid ..... 276(12.5a)
Discover Place grassroots science program grant-in-aid ..... 276(12.5a)
Eastern N.C. Regional Science Center grassroots science program grant-in-aid ..... 276(12.5a)
Elizabeth City Science Center grassroots science program grant-in-aid ..... 276(12.5a); 345(23)
Fascinate-U grassroots science program grant-in-aid ..... 276(12.5a)
Greenville Children's Museum grassroots science program grant-in-aid ..... 276(12.5a)
Harris Gallery grassroots science program grant-in-aid ..... 276(12.5a)
Health Adventure Museum at Pack Place grassroots science program grant-in-aid ..... 276(12.5a)
Highlands Nature Center grassroots science program grant-in-aid ..... 276(12.5a)
Imagination Station grassroots science program grant-in-aid ..... 276(12.5a)
Kidsenses grassroots science program grant-in-aid ..... 276(12.5a)
Maritime Museum friends of the museum tall ships event funds ..... 276(28.28)
Museum of Coastal Carolina grassroots science program grant-in-aid ..... 276(12.5a)
Museum of Life and Science grassroots science program grant-in-aid ..... 276(12.5a)
Museums are special purpose project for bond issuance ..... 238(10)
Natural Science Center of Greensboro grassroots science program grant-in-aid ..... 276(12.5a)
Port Discover grassroots science program grant-in-aid ..... 345(23)
Schiele Museum of Natural History grassroots science program grant-in-aid ..... 276(12.5a)
Sci Works Science Center and Environmental Park grassroots science program grant-in-aid ..... 276(12.5a)
Transportation Museum capital improvements to Back Shop ..... 276(28.20)
Western North Carolina Nature Center grassroots science program grant-in-aid ..... 276(12.5a)
Wilmington Children's Museum grassroots science program grant-in-aid ..... 276(12.5a)

N

Nags Head, Town of—unregistered all-terrain vehicle use....305(1)
Narcotics (*see also* Substance Abuse; Testing)
Concealed weapons carry by law enforcement 337
Drug treatment court funds....276(14.22); 345(29a)–(29b)
Duplicative school accreditation requirement repealed.... 155
Intoxication definition for workers compensation....448(2)
Methamphetamine precursors control 434
Psuedoephedrine use in methamphetamine manufacturing study....434(8)
Public transportation operator positive drug test notification 156
Nash County
Dortches, Town of –*see* that heading
Rocky Mount, City of –*see* that heading
National Guard–*see* Armed Forces
Natural Heritage Trust Fund, Board of Trustees—appointments and membership....421(1.30), (2.33A)
Negotiable Instruments—payment of campaign expenses by any verifiable form....430(3)
Neuse River
Modeling/monitoring program reports amendment ....386(2.1), (2.3)
Neuse regional water & sewer authority ....345(45)
New Hanover County
Alternative learning program proposal requirement ....446(4)
Public defender office established in 5th defender district .... 276(14.14a)–(14.14b); 345(50A)
Wilmington, City of –*see* that heading
Wrightsville Beach nourishment ....276(30.3a)
New Motor Vehicles Warranties Act 436
Newport, Town of—overgrown vegetation violators annual notice 175
North Carolina Railroad Board of Directors
Appointments and membership ....421(1.42), (2.44)
Dividends use....276(28.7)
North Wilkesboro, Town of—conveyance of property for a prison 258
Northampton County—consent required for condemnation by local government outside county 33
Northeastern North Carolina Regional Economic Development Commission
Appointments and membership ....421(1.31), (2.34)
Appropriations .... 276(13.6a)–(13.7b), (13.6C)
Reports –*see* that heading

Notary Public
Elected official recommendation eliminated in certain circumstances ... 75
Fees increase ... 328
Uniform Real Property Electronic Recording Act ... 391(1)–(2)
Notary Public Act ... 391
Notification
Anatomic pathology services markup disclosure ... 415
Changing wages requirement ... 453(21)
Electricity supplier choice notification to consumer ... 150(4)
Employer-owned life insurance disclosure ... 234(2)
Life insurance and annuity disclosure ... 234(1)–(1.11)
Nuisance ordinance violators
Bladenboro ... 305(11a)–(11b)
Chronic violators in Matthews ... 44
Overgrown vegetation violators annual notice for certain cities ... 45; 81; 175; 202; 308
Planning ordinance public hearing ... 426(1)
Process and revocation order service for DMV by law enforcement ... 357
Protective order notification to school ... 423(1)
Public transportation operator positive drug test notification ... 156
Satisfaction and cancellation of mortgages and deeds of trust ... 123
Seizure and destruction of firearm in Mecklenburg County ... 106
State/federal authorities notification of occupational therapy licensing disciplinary actions ... 432(4)
Termination of rental space for manufactured homes ... 291
Vacation rental home agreements ... 292
Zoning amendment notice ... 418(4)
Nursing
Contracted medical positions conversion in Correction Dept. ... 276(17.7a)–(17.7b)
Medical liability coverage for certain department employees ... 276(10.7a)–(10.7c)
Medication aides in skilled nursing facilities ... 276(10.40Ca)–(10.40Cd)
Need-based scholarship loan administration changes ... 40
Nursing education and research center special indebtedness at Fayetteville State ... 276(30.3A)
Nursing scholars program waiver ... 276(9.33)
School nurse
Funding ... 276(10.53a)–(10.53b)
Funding initiative ... 276(5.1cc)
Issues study ... 276(7.38b)

Nursing, Board of—continuing competency licensing requirement 186
Nursing Homes
Adult assisted living communities licensure category 66
Adult care homes
Division of Facility Services fees ..... 276(41.2a)–(41.2k)
Medicaid cost share ..... 276(10.13b)
Quality improvement consultation program ..... 276(10.40Ap)
Star-rating system plan ..... 276(10.41)
State-county special assistance ..... 276(10.38a)–(10.38e)
Statutory compliance deadline exemption due to relocation ..... 70(2)
Continued operation of health care facility with invalidated certificate of need under certain circumstances ..... 276(10.40Ba)–(10.40Bb)
Criminal record checks 4
Health Care Personnel Registry study ..... 276(10.40Aq)
Medication aides in skilled nursing facilities ..... 276(10.40Ca)–(10.40Cd)
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ..... 276(10.40Aa)–(10.40Ar)
Nursing Scholars Commission—appointments and membership ..... 421(1.33), (2.36)
Nutrition–*see* Public Health

O

Oak Ridge, Town of—voluntary annexations ..... 245(1)
Occupational Safety and Health Act 133
Occupational Safety and Health Review Board—name changed from Safety and Health Review Board 133
Occupational Safety and Health Review Commission--assessment of penalties ..... 133(8)
Occupational Testing–*see* Testing
Occupational Therapy, Board of
Appointments and membership ..... 432(3)
Fees ..... 432(12)
Notification of state/federal authorities of disciplinary actions ..... 432(4)
Occupational Therapy Practice Act 432
Ocean Isle Beach, Town of
Museum of Coastal Carolina grassroots science program grant-in-aid ..... 276(12.5a)
Removal of abandoned airplanes from public property 59
Off-Road Vehicles–*see* Motor Vehicles

Onslow County
Delinquent property tax collection procedure 109
Jacksonville, City of –*see* that heading
Orange County
Carrboro, Town of –*see* that heading
Chapel Hill, Town of –*see* that heading
Hillsborough, Town of –*see* that heading
Hunting on private property prohibited without written permission..... 264
One-stop voting on election day pilot program..... 256
Satellite voting centers..... 305(4.1)–(4.2)
Ossipee, Town of—amend budget ordinances..... 34
Osteoporosis Prevention Task Force—appropriations--operating costs ..... 276(5.1a)
Oxford, City of
Harris Gallery grassroots science program grant-in-aid..... 276(12.5a)
Overgrown vegetation violators annual notice..... 175

P

Pamlico County
Board of Education elections..... 305(6a)–(6b)
Parking Regulation–*see* Law Enforcement
Parks and Recreation Areas
Fishing in Triad Park without a license..... 257
Lands added to State Parks System..... 26
Parks and Recreation Authority—appointments and membership..... 421(1.34), (2.37)
Parole and Probation–*see* Probation and Parole
Parole Commission–*see* Post-Release Supervision and Parole Commission
Partnership For Children, Inc., Board of Directors
Appointments and membership..... 421(1.35), (2.38)
Early Childhood Education and Development Initiatives
Competitive bid practices..... 276(10.64b)
Funds allocation..... 276(10.64e)
Matching funds requirement..... 276(10.64c)
Smart Start funding study..... 276(10.65a)–(10.65b)
Pasquotank County
Board of Education elections and validation of actions..... 305(9a)–(9c)
Elizabeth City, City of –*see* that heading
Occupancy tax changes..... 16
Pembroke, Town of
UNC-Pembroke –*see* University of North Carolina
Pender County
Animal waste management system inspection pilot program extended..... 276(12.7a)–(12.7c)

Pender County—continued
Public defender office established in 5th defender district ..... 276(14.14a)–(14.14b); 345(50A)
Surf City, town of –*see* that heading
Surf City/North Topsail beach protection study ..... 276(30.3a)
Watha, Town of –*see* that heading
Perfusionist Advisory Committee—created 267
Person County—fox hunting/trapping season 262
Persons with Disabilities, Governor's Advocacy Council for
Advocacy programs study continuation ..... 276(19.1)
Appointments and membership ..... 421(1.36), (2.23)
Petroleum Underground Storage Tank Funds Council
Appointments and membership ..... 421(1.37), (2.39)
Pharmaceuticals
ADAP (AIDS Drug Assistance Program) –*see* AIDS (Acquired Immune Deficiency Syndrome)
Controlled substances reporting ..... 276(10.36a)–(10.36c); 345(17)
Copays in TSECMMP ..... 276(29.31a)
Drug plan enrollment ..... 276(10.4b)
Electronic quality prescription management program implementation ..... 276(10.19B)
Inmate costs ..... 276(17.6a)–(17.6c)
Medicaid prior authorization for antihemophilic drugs exemption extended 83
Medication aides in skilled nursing facilities ..... 276(10.40Ca)–(10.40Cd)
NC Health Choice prescription drug payments ..... 276(10.22d)
Opportunity for comment on medications restrictions for Medicaid ..... 276(10.11y)
Pharmacy Quality Assurance Protection Act 427
Pseudoephedrine sales controls 434
Senior Cares program ..... 276(10.4a)–(10.4c)
Senior prescription drug access program funding ..... 276(10.2)
Pharmacists—minority recruitment to pharmacy schools pilot program ..... 276(10.59B)
Pharmacy, Board of
Inspections/investigations of violations ..... 402(1.1)–(1.2)
Licensure renewal ..... 402(4)
Medical errors and incidents 427
Pharmacy Quality Assurance Protection Act ..... 427(1)
Setting/raising fees ..... 402(2)–(3)
Pharmacy Quality Assurance Protection Act 427
Physicians
Anatomic pathology services markup disclosure 415
Contracted medical positions conversion in Correction Dept. ..... 276(17.7a)–(17.7b)

Physicians—continued
Co-payments for chiropractic care higher than similar physician care prohibited....276(6.29)
Involuntary commitment affidavit filing 135
Medical liability coverage for certain department employees .... 276(10.7a)–(10.7c)
UNC Board of Governors medical scholarships .... 276(9.10a)–(9.10b)
Piedmont Triad Partnership
Appropriations .... 276(13.6a)–(13.7b), (13.6C)
Reports –*see* that heading
Pilot Mountain, Town of—Town Manager to appoint Town Clerk and Treasurer .... 433(10.1)
Pilot Programs
Adult care homes quality improvement consultation program....276(10.40Ap)
Animal waste management system inspection pilot program extended .... 276(12.7a)–(12.7c)
Defibrillators in public buildings study .... 276(10.57a)–(10.57c)
Express DENR permit and certification review program expanded statewide .... 276(12.2b)
GPS system monitoring of domestic violence and sex offenders pilot program report .... 276(17.19b)
Home protection pilot program and loan fund expansion .... 276(20.2a)–(20.2f)
Incentive pay in Transportation Dept. Project Development and Environmental Analysis branch .... 276(28.11f)
Medical Child Care Pilot funds .... 276(5.1k)
Medication aides .... 276(10.40Da)–(10.40Df)
Motor carrier enforcement civilian inspection enforcement teams pilot program .... 276(28.24a)–(28.24b)
One-stop voting on election day pilot program for Orange County 256
Small specialty high schools .... 276(7.52a)–(7.52b)
Stormwater pilot project report .... 276(28.19)
Transportation productivity pilot programs continuation .... 276(28.9a)–(28.9b)
Virtual high school planning and funding .... 276(7.41a)–(7.41e)
Pineville, Town of
Annexation 119
Overgrown vegetation violators annual notice 81
Pitt County
Ayden, Town of –*see* that heading
Farmville, Town of –*see* that heading
Greensboro, City of –*see* that heading
Grifton, Town of –*see* that heading
Hunting regulations 42
Indigent defense positions .... 345(28)
Water/wastewater project funds .... 276(13.11b)

Pittsboro, Town of—public-private reimbursement agreements for infrastructure development 41
Planned Community Act 214
Planning and Zoning (*see also* Eminent Domain)
Annexation –*see* that heading
Board of adjustment ..... 418(8)
Demolition of structures in Statesville historic district 143
Development agreements ..... 426(9)
Display of official government flags 360
Extraterritoriality
Jurisdiction extension for Roanoke Rapids ..... 9(2)–(3)
Jurisdiction for Archdale 115
Jurisdiction for St. James ..... 305(2)
Infrastructure agreements ..... 426(8)
Jurisdiction over Ports Authority property in Southport ..... 305(11a)–(11b)
Multi-jurisdictional industrial park exception ..... 406(1)
Municipal/county planning and land use statute modernization and simplification 426
Overgrown vegetation violators annual notice for certain cities 45; 81; 175; 308
Planning board review ..... 418(7)
Planning ordinance public hearing ..... 426(1)
Preliminary plat approval ..... 418(2)–(3)
Protest petitions ..... 418(5)–(6)
Public nuisance ordinance violator notification for Bladenboro ..... 305(10a)–(10b)
Repair or demolition of dwellings unfit for habitation in certain cities ..... 200; 305(12a)–(12b)
State land subject to municipal planning jurisdiction repealed 280
Subdivision regulation ..... 426(2)–(4)
Technical corrections and conforming changes 418
Tree planting and removal ordinances authorized for Matthews ..... 305(5)
Unified development ordinance ..... 418(1)
Utility corridor service rights outside cities ..... 150(2)
Zoning amendment notice ..... 418(4)
Zoning regulation changes ..... 426(5)–(7)
Plumbing, Heating and Fire Sprinkler Contractors, Board of Examiners of—electric generating facilities exempt ..... 289(3)
Political Parties—use of runners ..... 428(1)
Polk County
Divide District Court district 29 ..... 276(14.2f)–(14.2k)
Divide prosecutorial district 29 ..... 276(14.2l)–(14.2q)
Hurricane recovery 1
Superior Court District 29 divided ..... 276(14.2a)–(14.2e2)

Pollution
Clean Water Management Trust Fund purpose expanded ..... 454(4)–(6)
Global climate change study ..... 442(5)
Texfi site contamination cleanup and monitoring funds ..... 276(12.9)
Ports
Deep channel port and collateral rail requirements needs assessment ..... 276(28.26a)–(28.26b)
Wilmington harbor deepening and maintenance funds ..... 276(30.3a)
Ports Authority, Board of State
Appointments and membership ..... 421(1.53), (2.58)
Appropriations
Ports of Wilmington and Morehead City ..... 276(30.2)
Planning and zoning jurisdiction over property by City of Southport ..... 305(11a)–(11b)
Post-Release Supervision and Parole Commission
Appointments and membership ..... 276(17.25a)–(17.25b)
Chair's salary ..... 276(29.3)
Member salaries ..... 276(29.3); 345(39)
Mutual Agreement Parole Program ..... 276(17.27)
Parole eligibility analysis ..... 276(17.28a)–(17.28c)
Reports –*see* that heading
Power of Attorney--enforcement 178
Privacy
Access to medical information for workers compensation ..... 448(6.1)–(7)
Autopsy photos not public record 393
Breach of school employee files confidentiality 321
Controlled substances reporting ..... 276(10.36a)–(10.36c); 345(17)
Hunting/fishing license information disclosure ..... 455(1.17)
Insurance market conduct analysis and financial analysis file confidentiality 206
Motor vehicle dealer data ..... 409(4)
Private Protective Services–*see* Security Services
Private Protective Services Board
Appointments and membership ..... 421(1.38), (2.40)
Pay for use of State facilities and services ..... 276(15.2)
Probationary and registered regular employees ..... 211(1)
Privatization—private vendor medicaid billing system authorized ..... 459(1)
Probation and Parole
Caseload report ..... 276(17.20a)
Criminal Justice Partnership Program ..... 276(17.23a)–(17.23i)
Electronic monitoring device fee ..... 276(43.2a)–(43.2b)
Inmates eligible for parole report ..... 276(17.24)

Probation and Parole—continued
Mutual Agreement Parole Program ..... 276(17.27)
No payment of special condition costs by defendant ..... 276(17.29)
Probation/parole officer workload study ..... 276(17.20b)–(17.20c)
Professional Education–*see* Employment; Licensing and Certification; particular occupation
Professional Employer Organization Act 124
Professional Teaching Standards Commission
Mentor training standards ..... 276(7.21b)
Teacher working conditions survey ..... 276(7.40a)–(7.40b)
Property
Acquisition of real property by Dental Board ..... 366(3)
Attorneys' fees awarded in actions enforcing planned community rules 214
Blue Ridge Road, and Dorothea Dix properties disposition limited ..... 276(6.25a)–(6.25c)
Board of Adjustment appointment according to general law for Wrightsville Beach 265
Certain subordination agreements validated ..... 212(1)
Clean water revolving loans and grants encumbered by real/personal property ..... 238(11)
Consultative requirement before State real property acquisition eliminated 39
Convey property at private sale
Kernersville ..... 433(7a)–(7c)
Laurinburg 6
Sunset on certain property repealed for Mecklenburg County 158
Weldon ..... 174(1a)–(1b)
Conveyance of property for a prison by North Wilkesboro 258
Councils of Government may acquire real property 290
Dorothea Dix Hospital
Dorothea Dix and Blue Ridge Road properties disposition limited ..... 276(6.25a)–(6.25c)
Master plan extension 7
Eminent Domain –*see* that heading
Encumbering of real property by local government ..... 238(4)
Escheats
Escheat Fund investment program for benefit of needy higher education students 252
Holding period for business association equity interests reduced 132
Exclusive jurisdiction over land acquired by federal government limited 69
Foothills Regional Airport Authority property conveyance 171
Green square project authorization 255
Liens on real property 229

Property—continued
Limit on property a judgement debtor can exempt from claims of creditor 401
Long-term leases not treated as sales for Durham County 172
Medicaid estate recovery to include real property liens ..... 276(10.21Ca)–(10.21Cc); 345(16)
Present-use value clarification ..... 313(1)–(7)
Property tax –*see* Taxes and Assessments
Purchases and leases of real property by city employees in Raleigh ..... 157(1)
Real estate broker duties regarding trust monies ..... 374(2)
Real estate licensure changes 395
Rutherford Airport Authority property lease 105
Sale of UNC-Asheville chancellor's residence ..... 276(9.12)
Seized and forfeited property use ..... 276(15.1a)–(15.1c)
State land subject to municipal planning jurisdiction repealed 280
Transfer of State-owned property between water and sewer districts ..... 127(1)
Uniform Real Property Electronic Recording Act ..... 391(1)–(2)
Property Tax Commission
Appointments and membership ..... 421(1.39)
Members pay funds ..... 345(36)
Per diem ..... 276(22.5a)–(22.5b)
Psychology—involuntary commitment affidavit filing 135
Public Defenders–*see* Courts
Public Employee Deferred Compensation Plan, Board of Trustees—appointments and membership ..... 421(1.40), (2.41)
Public Health
Accreditation system for local health departments 369
ALS Association Catfish Hunter Chapter funds ..... 276(10.10B)
Animal exhibits permitting and sanitation requirements 191
Asthma/anaphylaxis medication policies 22
Child nutrition standards for school meals 457
Childhood immunization programs funds ..... 276(10.58a)–(10.58b)
Chronic disease prevention activities inventory ..... 276(10.56)
Community Health Center
Community health center, rural health center funding study ..... 276(10.9d)
Funds ..... 276(10.9a)–(10.9d)
Contagious animal disease provisions sunset extension 21
Defibrillators in public buildings study ..... 276(10.57a)–(10.57c)
Health disparities initiative ..... 276(10.59E)
Local health department smoking restrictions 19; 168
Newborn screening fee ..... 276(41.1a)–(41.1b)
Prohibit smoking in correctional institutions 372

Public Health—continued
Rural health center, community health center funding study ..... 276(10.9d)
School-linked health centers study ..... 276(10.59Ga)–(10.59Gc)
Set-off debt collection for certain entities 326
Smoking regulation exemption for large indoor arenas 239
University and community college food programs enhanced nutrition ..... 276(9.28a)–(9.28b)
Vending products in schools standards 253
Public Health Authority Boards (local)
Membership increase authorized ..... 459(2)
Private vendor medicaid billing system authorized ..... 459(1)
Public Instruction, Department of
Abstinence Until Marriage Education Program funds ..... 276(5.1aa)
Appropriations
Base budget reduction ..... 276(7.16)
Continuation budget ..... 201(3)
Current operations ..... 276(2.1)
School nurse funding ..... 276(10.53a)–(10.53b)
School transportation study ..... 276(7.57)
E-Rate assistance and report ..... 276(7.43f)
LEA sales tax refund reporting ..... 276(7.27a)–(7.27c)
Liaison with military bases feasibility ..... 445(5)
Limited English proficiency students head count ..... 276(7.9b)
Local school technology plan workshops ..... 276(7.43b)
More at Four continued implementation ..... 276(10.67a)–(10.67g)
Office of School Readiness creation plan ..... 276(10.68a)–(10.68d)
Prospective teacher scholarship loan fund transferred to Education Assistance Authority ..... 276(9.17a)–(9.17c)
School technology plans review ..... 276(7.43c)
School transportation study ..... 276(7.57); 345(8)
School-based child and family team initiative collaboration ..... 276(6.24a)–(6.24f)
Superintendent's salary ..... 276(29.1b)
Transfer of More at Four study ..... 276(10.68a)–(10.68d)
Vending products in schools standards 253
Public Meetings—comment period requirement for local boards and councils 170
Public Officials (*see also* Appointments; Ethics)
Breach of school employee files confidentiality 321
Election of certain public officials according to general law in Beaufort County 263
Filing fees for candidacy ..... 428(8)
General Assembly resolution of contested Council of State elections procedures 3
Governor –*see* that heading
Lieutenant Governor –*see* that heading

Public Officials (*see also* Appointments; Ethics)—continued
Local government finance officer performance bond increase ..... 238(2)
Mayor and town council terms for Watha ..... 141(1)
Mayor Pro Tem election in High Point ..... 54(1a)
Mayor's term in Claremont ..... 54(2)
Police chief hiring for Monroe 17
President Pro Tempore of the Senate –*see* General Assembly
Removal of Cornelius mayor or commissioner for cause 188
Speaker of the House –*see* General Assembly
Tax collector appointed post for Henderson County ..... 305(8a)–(8c)
Town commissioners' terms for Gibson 61
Town Manager to appoint Town Clerk and Treasurer in Pilot Mountain ..... 433(10.1)
Public Records–*see* Records
Public Telecommunications, Agency for, Board of Directors
Appointments and membership ..... 421(1.41), (2.43)
Executive Director's salary ..... 276(29.3)
Public Television, UNC Center for, Board of Trustees—appointments and membership ..... 421(1.61), (2.42)
Public Transportation
Authorities treated as cities for purposes of civil liability 160
Operator positive drug test notification 156
Vehicle tax for public transportation for Black Mountain ..... 306(2a)–(2b)

R

Racing—aviation fuel sales and use tax refund for motor sports event travel ..... 435(61.1)
Railroad, North Carolina–*see* North Carolina Railroad Board of Directors
Railroads
Deep channel port and collateral rail requirements needs assessment ..... 276(28.26a)–(28.26b)
Federal funds utilization strategies for rail improvements report 222
Malt beverage permit elections for cities with railroad terminus 336
NC Railroad dividends use ..... 276(28.7)
Rail cars and locomotives sales and use tax refund ..... 276(33.12)
Transportation Museum capital improvements to Back Shop ..... 276(28.20)
Raleigh, City of
Capital area visitor's center funds ..... 276(30.2)
Dorothea Dix and Blue Ridge Road properties disposition limited ..... 276(6.25a)–(6.25c)

Raleigh, City of—continued
General Assembly police jurisdiction ... 359
Green square project authorization ... 255
North Carolina State University –*see* University of North Carolina
Purchases and leases of real property by city employees ... 157(1)
Sale of equipment to public safety employees on retirement ... 157(2)
Swift Creek Management Plan enforcement ... 89
Randolph County
Archdale, City of –*see* that heading
Hurricane recovery ... 1
Seagrove designated birthplace of North Carolina pottery ... 78
Real Estate–*see* Property
Real Estate Commission
Appointments and membership ... 421(1.43), (2.45)
Member per diem and mileage ... 374(1)
Real estate licensure changes ... 395
Recordation of Instruments
No recordation of deed without certificate of no delinquent taxes in certain counties ... 433(1a)–(2b)
Priority of instruments clarified ... 212(2)–(3)
Satisfaction and cancellation of mortgages and deeds of trust ... 123
Uniform Real Property Electronic Recording Act ... 391(1)–(2)
Records (*see also* Privacy)
Access to public records that are trial preparation materials ... 332
Autopsy photos not public record ... 393
Boundary settlement between Wilson and Greene Counties ... 259
Certain subordination agreements validated ... 212(1)
Child abuse/neglect responsible individuals list creation ... 399
Compliance review working papers by State Controller not public record ... 65
Confidentiality –*see* Privacy
Criminal records
Checks ... 431
Adoption ... 114(1)–(3)
Archaeological permit applicants ... 367
Concealed handgun permits report ... 276(15.5a)
County government ... 358
Dept. Juvenile Justice employment ... 114(4)
DHHS employment ... 114(4)
Fee adjustment study ... 276(15.5b)
Long-term care facilities ... 4
Lottery officials ... 344(6)
Lottery vendors and Commission members ... 276(31.1f), (31.1w)

Records (*see also* Privacy)—continued
Criminal records—continued
Expunction of records
Certain circumstances ... 452
Pardon of innocence ... 319
Destruction of cancelled bonds ... 238(9)
Economic development public records laws clarification ... 429
Homeowners associations ... 422(7), (17)
Hunting/fishing license information disclosure ... 455(1.17)
Insurance market conduct analysis and financial analysis file confidentiality ... 206
Medical records
Access to medical information for workers compensation ... 448(6.1)–(7)
Consent to release of medical records to combat Medicaid fraud ... 276(10.11x)
Priority of instruments clarified ... 212(2)–(3)
Privacy –*see* that heading
Public disclosure of economic development efforts study ... 429(3)
Uniform Real Property Electronic Recording Act ... 391(1)–(2)
Voter registration data access ... 428(10)
Recreation and Leisure (*see also* Boating)
Agritourism liability limits ... 236
Corvett Club special plate ... 216(3)–(7)
Harley Owners' Group special plate ... 216(3)–(7)
SCUBA special plate ... 216(3)–(7)
Shag dancing special plate ... 216(3)–(7)
Share the road special plate ... 216(3)–(7)
Tarheel Classic Thunderbird Club special plate ... 216(3)–(7)
Recreational Therapy Licensure Act ... 378
Recreational Therapy Licensure, Board of
Appointments and membership ... 421(1.60), (2.66)
Named changed from State Board of Therapeutic Recreation Certification ... 378
Recodified ... 378
Recycling–*see* Conservation; Waste Management
Red Cross, Town of—budget ordinance conformance ... 245(2)
Redistricting—precinct boundary program ... 428(16)
Referendums and Initiatives–*see* Elections
Register of Deeds (*see also* Recordation of Instruments)
Boundary settlement between Wilson and Greene Counties ... 259
Election according to general law in Beaufort County ... 263
No recordation of deed without certificate of no delinquent taxes in certain counties ... 433(1a)–(2b)
Priority of instruments clarified ... 212(2)–(3)
Satisfaction and cancellation of mortgages and deeds of trust ... 123

Register of Deeds (*see also* Recordation of Instruments)—continued
Uniform Real Property Electronic Recording Act ..... 391(1)–(2)
Uniform Residential Mortgage Satisfaction Act adoption 123
Reidsville, Town of—occupancy tax ..... 233(3)–(3c)
Religion—breaking/entering a place of worship 235
Remote Learning–*see* Electronic Government
Reports
Administration, Department of
Advocacy programs study continuation ..... 276(19.1)
State motor vehicle fleet alternative fuel, synthetic lubricant, efficient vehicle plans ..... 276(19.5c)
Vendor disclosure of overseas work on contracts 169
Administrative Office of the Courts (AOC)
Domestic violence offender tracking study ..... 356(2)
Family court in district 10 feasibility study ..... 276(14.18)
Family court model study ..... 356(4)
Adult Protective Services Task Force
Adult protective services improvement 23
Advanced Vehicular Research Center ..... 276(13.8Ac)–(13.8Af)
Biotechnology Center
Reporting requirement ..... 276(13.10c)–(13.10d)
Budget and Management, Office of State
Criminal records checks fee adjustment study ..... 276(15.5b)
Distance education study ..... 276(9.7)
DNA testing and analysis costs study ..... 276(15.8)
Federal funds use as State matching funds for Juvenile Accountability Incentive Block Grants ..... 276(16.5)
Infrastructure information collection and management methods study ..... 276(6.33b)
Multiyear information technology infrastructure maintenance contracts ..... 276(20A.1c)
Overhead cost recovery study ..... 276(6.6c)
Personal service contracts reports ..... 276(6.38)
State laboratories consolidation study ..... 276(6.36c); 345(4)
Carolinas Partnership, Inc.
Annual reports ..... 276(13.8a)–(13.8e)
Clean Water Management Trust Fund Board of Trustees
Conservation easements stewardship study ..... 276(6.22)
Commerce, Department of
Alternative funding for Industrial Commission study ..... 276(13.6A)
Trade Jobs for Success initiative ..... 276(13.4Aa)–(13.4Ab)
Community Colleges, State Board of
Community college facilities use by private companies 247
Faculty and professional staff salaries ..... 276(8.3f)
Ferry boat operator training feasibility study ..... 276(8.7b)
Lateral entry teacher certification training programs ..... 198(2)–(4)
Tuition waiver exchange program study ..... 276(9.25b)

Reports—continued
Community Colleges System Office
College Information System Project ..... 276(8.1a)–(8.1c)
Medication aides study ..... 276(10.40Dc)
Multicampus funds adequacy ..... 276(8.5)
Trade Jobs for Success initiative ..... 276(13.4Aa)–(13.4Ab)
Correction, Department of
Cleveland Correctional Center minimum security conversion study ..... 276(17.18)
Closed correctional facilities use ..... 276(17.5)
Community Service Work Program integration into Div. of Community Corrections ..... 276(17.21)
Computer/data processing services funds ..... 276(17.10)
Contracted medical positions conversion ..... 276(17.7a)–(17.7b)
Correction enterprises long-range planning ..... 276(17.16a)
Criminal Justice Partnership Program ..... 276(17.23d)
Domestic violence offender tracking study ..... 356(3)
Electronic monitoring system report ..... 276(17.19a)
Energy Committed to Offenders contract ..... 276(17.17A)
GPS system monitoring of domestic violence and sex offenders pilot program ..... 276(17.19b)
Harriet's House annual report ..... 276(17.22a)
Inmate custody and classification system review ..... 276(17.12b)
Inmate health care cost containment study 276(17.15c)–(17.15d)
Inmate labor contracts and community work crews ..... 276(17.14)
Mutual Agreement Parole Program ..... 276(17.27)
Probation and parole caseload ..... 276(17.20a)
Probation/parole officer workload study ..... 276(17.20c)
Security staffing formulas ..... 276(17.4b)–(17.4c)
Seized and forfeited property use ..... 276(15.1a)
Summit House annual report ..... 276(17.22b)
Umstead Hospital laundry replacement ..... 276(17.16b)
Unit management staffing study ..... 276(17.17)
Women at Risk annual report ..... 276(17.22c)
Corrections, Crime Control, and Juvenile Justice Oversight Committee, Joint Legislative
Juvenile detention centers ..... 276(16.9)
Councils of Government
Reporting requirements ..... 276(13.2e)
Crime Commission, Governor's
Federal funds use as State matching funds for Juvenile Accountability Incentive Block Grants ..... 276(16.5)
Crime Control and Public Safety, Department of
Seized and forfeited property use ..... 276(15.1a)
Tarheel Challenge Program annual evaluation ..... 276(18.1)
Victims Assistance Network ..... 276(18.2)

Reports—continued
Criminal Justice Information Network Governing Board
Statewide Automated Fingerprint Identification System replacement ..... 276(15.9b)
Dorothea Dix Hospital Property Study Commission
Master plan extension 7
Eastern Region Development Commission
Annual reports ..... 276(13.8a)–(13.8e)
Economic Development Oversight Committee, Joint Legislative
Bill Lee Act and Job Development Investment Grant Program study ..... 241(8)
Professional services reverse auction study ..... 370(3)
Public disclosure of economic development efforts study ..... 429(3)
Education Assistance Authority
Physical Education-Coaching Scholarship Loan Fund ..... 276(9.31)
Education Cabinet
School nurse issues study ..... 276(7.38b)
Education Oversight Committee, Joint Legislative
In-state teacher tuition benefit study ..... 276(9.35)
Education, State Board of
At-risk/alternative schools and accountability allotments accountability ..... 276(7.61b)
Dropout rate reduction methods identification 271
Financial literacy curriculum ..... 276(7.59c)
Lateral entry teacher certification training programs ..... 198(2)–(4)
Learn and earn high school program evaluation ..... 276(7.32d)
Low-wealth counties supplemental funding expenditure report ..... 276(7.60)
Mentor teaching program effectiveness ..... 276(7.21d)
Mentor teaching retention results ..... 276(7.21c)
Resources needed for schools for 21st century learners study ..... 276(7.43e)
School transportation study ..... 276(7.57); 345(8)
Small specialty high schools pilot program ..... 276(7.52b)
Teacher planning time ..... 276(7.30)
Elections, State Board of
Code of ethics recommendation ..... 323(8)
One-stop voting on election day pilot program for Orange County 256
Employment Security Commission
Trade Jobs for Success initiative ..... 276(13.4Aa)–(13.4Ab)
E-NC Authority
Economic Infrastructure Program ..... 276(13.12f)
Regional education networks feasibility study ..... 276(7.42)

Reports—continued
Environment and Natural Resources, Department of (DENR)
Animal waste management system inspection pilot program extended ... 276(12.7a)–(12.7c)
Express permit and certification reviews ... 276(12.2a)
Grassroots science program ... 276(12.5b)
Natural heritage program ... 276(12.4A)
Phaseout of MTBE use in motor fuels regional approach ... 93(4)
Preventive and protective flooding measures study ... 1(7a)
Water Infrastructure Fund ... 454(3)
Water resources development projects ... 276(30.3c)
Environmental Management Commission
Nutrient control criteria and management strategy for drinking water supply reservoirs ... 190(2b), (3f)
Water quality in drinking water supply reservoirs study ... 190(2a)
Environmental Review Commission
Animal waste management system inspection pilot program extended ... 276(12.7c)
Global Climate Change, Legislative Commission on Study ... 442(11)
Governor, Office of the
Hurricane recovery ... 1(9)
Office of School Readiness creation plan ... 276(10.68d)
Health and Human Services, Department of (DHHS)
Accreditation of residential treatment facilities feasibility study ... 276(10.35Ab)
ADAP (AIDS Drug Assistance Program) ... 276(10.59b)
Adoption and foster care spending ... 276(5.1z2)
Adult care homes quality improvement consultation pilot program ... 276(10.40Ap)
Adult protective services improvement ... 23
Alcohol and drug education traffic schools outcomes evaluation study ... 312(4)
Block grant funded positions ... 276(5.1f)
Child care subsidy reimbursement system analysis ... 276(10.66a)–(10.66b)
Chronic disease prevention activities inventory ... 276(10.56)
Community alternative programs reimbursement system study ... 276(10.20b)
Community Care of N.C. expanded ... 276(10.17a)–(10.17e)
Community health center, rural health center funding study ... 276(10.9d)
Community mh,dd,sas delivery procedures ... 276(10.31)
Comprehensive treatment services program for children continuation ... 276(10.25g)
Coordination of children's services study ... 276(10.25m)
DDA group home funding ... 276(10.19Ab)

Reports—continued
Health and Human Services, Department of (DHHS)—continued
Defibrillators in public buildings study....276(10.57c)
Difficult to place children adoption incentives study....276(10.49)
Drop-in/short-term child care study....416(3.1)
Early intervention program expenditures plan....276(10.54c)
Federal funding of HHS schools....276(7.54c)
Governor's vision care program....276(10.59Ff); 345(20c)
Health Care Personnel Registry study....276(10.40Aq)
Health information systems development funds....276(10.59Ab)
Information technology plans....276(10.1c)
Intensive family preservation services enhancements....276(10.51Ad)
Involuntary committment mental health facilities listing....371(1)
Long term plan for meeting mh,dd,sas needs....276(10.24c)
Medicaid changes....276(10.11r)
Medicaid personal care services study....276(10.19b)
Medicaid/Medicare dual eligibility study....276(10.21E)
Medication aides in skilled nursing facilities....276(10.40Cd)
Medication aides study....276(10.40Dc)
Mental health crisis response services....371(1)
Mental retardation centers downsizing....276(10.29d)
Minority recruitment to pharmacy schools pilot program....276(10.59B)
More At Four program....276(10.67d)
N.C. FAST (Families Accessing Services through Technology)....276(5.1y)
Office of School Readiness creation plan....276(10.68d)
Residential schools reporting....276(10.52)
Residential treatment of children rules....276(10.35B)
School nurse funding....276(10.53a)
Services to multiply diagnosed adults....276(10.26d)
Special children adoption fund....276(10.48c)
Star-rating system for adult care homes....276(10.41)
State psychiatric hospitals transition planning....276(10.28d)
State-county special assistance....276(10.38e)
Highway Patrol
Motor carrier enforcement civilian inspection enforcement teams pilot program....276(28.24a)–(28.24b)
Real-time weigh-in-motion data sharing....276(28.25b)
Housing Finance Agency Board of Directors
Home protection pilot program and loan fund expansion....276(20.2a)
Humanities Council, North Carolina
Activities and expenditures report....276(24.1)
Indigent Defense Services, Office of
Cost reduction proposals....276(14.12)

Reports—continued
Indigent Defense Services, Office of—continued
Death penalty training funds for indigent defense ..... 276(14.8)
Expansion funds ..... 276(14.11); 345(28)
Inmate legal assistance contract with Prisoner Legal Services ..... 276(14.9b)
Operations ..... 276(14.12)
Industrial Commission
Alternative funding for Industrial Commission study ..... 276(13.6A)
Insurance
Professional Employer Organization Act implementation ..... 124(5)
Insurance, Department of
Interstate Insurance Product Regulation Compact ..... 183(2)
Judicial Department
Court fees and funds collection by electronic and online payment feasibility study ..... 276(14.5)
State match for grant funds ..... 276(14.6)
Worthless checks fund for office technology ..... 276(14.3)
Justice, Department of
Criminal records checks for concealed handgun permits ..... 276(15.5a)
Rape kit backlog reduction ..... 276(15.7b)
Seized and forfeited property use ..... 276(15.1a)
Statewide Automated Fingerprint Identification System replacement ..... 276(15.9b)
Juvenile Justice and Delinquency Prevention, Department of
Alternatives to juvenile commitment ..... 276(16.11b)–(16.11c)
Communities in Schools report ..... 276(16.3c)
Community programs report ..... 276(16.4)
Comprehensive treatment services program for children continuation ..... 276(10.25g)
Federal funds use as State matching funds for Juvenile Accountability Incentive Block Grants ..... 276(16.5)
Gang violence prevention grants ..... 276(16.8b)
Juvenile Assessment Center report ..... 276(16.3b)
Project Challenge report ..... 276(16.3a)
Treatment staffing model at youth development centers ..... 276(16.6a)–(16.6b)
Youth development centers capital projects ..... 276(16.7)
Legal Education Assistance Foundation
Expenditures ..... 276(15.6)
Legislative Research Commission
Horace Williams Airport study ..... 276(9.15)
School-linked health centers study ..... 276(10.59Gb)
Marine Fisheries Commission
Marine Resources Fund and Marine Resources Endowment Fund ..... 455(2.7)–(2.8)

Reports—continued
Mental Health, Developmental Disabilities, and Substance Abuse Services, Legislative Oversight Committee on
Oversight and monitoring of mental health services study ..... 276(10.34)
More at Four Pre-K Task Force
More At Four program ..... 276(10.67d)
Motor Vehicles, Division of
Online dealer registration enhancement ..... 276(28.22b)
Northeastern North Carolina Regional Economic Development Commission
Annual reports ..... 276(13.8a)–(13.8e)
Nursing, Board of
Medication aides in skilled nursing facilities ..... 276(10.40Cd)
Partnership For Children, Inc., Board of Directors
Smart Start funding study ..... 276(10.65b)
Piedmont Triad Partnership
Annual reports ..... 276(13.8a)–(13.8e)
Post-Release Supervision and Parole Commission
Inmates eligible for parole ..... 276(17.24)
Parole eligibility analysis ..... 276(17.28a)–(17.28c)
Staffing reorganization and reduction ..... 276(17.26)
Public Instruction, Department of
Comprehensive treatment services program for children continuation ..... 276(10.25g)
Liaison with military bases feasibility ..... 445(5)
More At Four program ..... 276(10.67d)
Office of School Readiness creation plan ..... 276(10.68d)
Research Triangle Regional Commission
Annual reports ..... 276(13.8a)–(13.8e)
Revenue, Department of
Enhanced compliance, enforcement, and collection efforts ..... 276(22.4)
Overdue tax debt collection fee proceeds use ..... 276(22.1b)
Revenue Laws Study Committee
Sales and use tax issues study ..... 276(33.32)
Rural Economic Development Center
Annual report ..... 276(13.11f)
Budget report ..... 276(13.11c)
North Carolina Infrastructure Program ..... 276(13.12e)
Opportunities Industrialization centers ..... 276(13.13a)–(13.13c)
Regional education networks feasibility study ..... 276(7.42)
SBI (State Bureau of Investigation)
Psuedoephedrine use in methamphetamine manufacturing study ..... 434(8)
Science and Technology, Board of
Trends that reflect the impact of education on economic growth report by county ..... 345(25)

Reports—continued
Sentencing and Policy Advisory Commission
Juvenile recidivism study ..... 276(14.19a)–(14.19b)
Southeastern North Carolina Regional Economic Development Commission
Annual reports ..... 276(13.8a)–(13.8e)
State Auditor
Child caring institutions overhead rates and reimbursements audit ..... 276(10.47a)
State Controller
Vendor overpayments deposits and disbursements ..... 276(25.1e)
State Personnel, Office of
Personal service contracts reports ..... 276(6.38)
State Treasurer
Monthly workload statistics and productivity data for Retirement Systems Division ..... 276(27.2b)
State investment officer position incentive bonus ..... 276(27.3)
Technology infrastructure enhancements for Retirement Systems Division ..... 276(27.1)
Transportation, Department of
Deep channel port and collateral rail requirements needs assessment ..... 276(28.26a)–(28.26b)
Federal funds utilization strategies for rail improvements report 222
Incentive pay pilot project in Project Development and Environmental Analysis branch ..... 276(28.11f)
Moving ahead projects funds use ..... 276(28.23d)
Performance-based maintenance contracts ..... 276(28.10)
Productivity pilot programs continuation ..... 276(28.9b)
Small construction and contingency funds ..... 276(28.4)
Stormwater pilot project ..... 276(28.19)
Trade show transportation services funds ..... 276(28.2)
Unsafe or obsolete field facilities funds ..... 276(28.6)
Tryon Palace Commission
Tryon Palace Historic Sites and Gardens Fund ..... 276(19A.1)
Umstead Act review panel ..... 397(4)
UNC Board of Governors
2 + 2 programs ..... 276(9.2b)
Budget reductions ..... 276(9.1)
Construction and design supervisory authority for UNC 300
Future Teachers of North Carolina Scholarship Loan Fund ..... 276(9.11a)
Higher education strategy study extended ..... 276(9.18)
Tuition waiver exchange program study ..... 276(9.25b)

Reports—continued
Utility Review Committee, Joint Legislative
Wireless 911 and emergency telephone system issues study ..... 439(11b)
Western North Carolina Regional Economic Development Commission
Annual reports ..... 276(13.8a)–(13.8e)
Wildlife Resources Commission
Marine Resources Fund and Marine Resources Endowment Fund ..... 455(2.7)–(2.8)
Workers' Compensation Benefits, Study Committee on
Disability benefits study ..... 448(1d)
Rescue Squads–*see* Emergency Services
Research Triangle Regional Commission
Appropriations ..... 276(13.6a)–(13.7b), (13.6C)
Reports –*see* that heading
Restaurants And Cafes–*see* Food Services
Retailing
All terrain vehicle regulation 282
Biometric ID for purchasers of alcohol and tobacco products ..... 350(6a)–(6b)
Closing-out sale license issuance in Greensboro 12
Motor vehicle dealer
Fees increase ..... 276(44.1o)
Franchise clarification 409
Online registration enhancement study ..... 276(28.22a)–(28.22b)
Relocation of dealership without notification or hearing ..... 463(2)
Pseudoephedrine sales controls 434
Public toilets in malls ..... 289(2)
Revocation of ABC permits 392
Sales and use tax –*see* Taxes and Assessments
Vending products in schools standards 253
Wine shop permit ..... 350(2a)–(2c)
Wine tasting permit requirements ..... 350(1)
Retirement
Community College Optional Retirement System
Salary-related employer contributions ..... 276(29.24a)–(29.24e)
Consolidated Judicial Retirement System
Cost-of-living increases ..... 276(29.25b)
Salary-related employer contributions ..... 276(29.24a)–(29.24e)
Technical corrections and conforming changes ..... 91(5)–(6)
Utilities Commission participation ..... 276(29.30Aa)–(29.30Ai); 345(42)
Cost-of-living increases ..... 276(29.25a)–(29.25d)

Retirement—continued
Fire and rescue squad workers
Appropriations....276(2.1)
Firemen's and Rescue Squad Worker's Pension Fund
Monthly increase....276(29.26)
Technical corrections and conforming changes....91(13)–(15)
Termination of membership....281
Legislative Retirement System
Allowance limitation....276(29.30Aj)
Cost-of-living increases....276(29.25c)
Salary-related employer contributions....276(29.24a)–(29.24e)
Local Government Employees Retirement System (LGERS)
Cost-of-living increases....276(29.25d)
Technical corrections and conforming changes....91(8)–(12)
Troutman participation....279
National Guard monthly retirement increase....276(29.27)
Retired teachers returning to classroom sunset extended....144(7A.1)–(7A.5)
Sheriffs' Supplemental Pension Fund
Benefit increase....276(29.30a)–(29.30c)
State Law Enforcement Officers' Retirement System
Salary-related employer contributions....276(29.24a)–(29.24e)
Teachers' and State Employees' Retirement System (TSERS)
Conform retiree return to teaching benefit to IRS guidelines....276(29.28a)–(29.28f); 345(43)
Cost-of-living increases....276(29.25a)
Participation by certain charter schools....315; 317
Salary-related employer contributions....276(29.24a)–(29.24e)
Technical corrections and conforming changes....91(1)–(4)
Technology infrastructure enhancements for Retirement Systems Division report....276(27.1)
University Employees' Optional Retirement System
Salary-related employer contributions....276(29.24a)–(29.24e)
Revenue, Department of (*see also* Taxes and Assessments)
Appropriations
Current operations....276(2.1); 345(1a)
Property Tax Commission members pay....345(36)
Audit of vehicle registration under International Registration Plan....435(22)
Debt fee for taxpayer locator services and collection....276(22.1a)–(22.1b)
Economic development tax credits reporting....429(2.2)–(2.12)
Fuel Tax Compliance Division
Time-limited positions converted to permanent....276(22.3)
Inspection of motor carrier books....435(5)
LEA sales tax refund reporting....276(7.27a)–(7.27c)
Motor carrier registration and identification markers....435(6)–(8)

Revenue, Department of (*see also* Taxes and Assessments)—continued
Motor fuel licenses ..... 435(10)–(11)
Motor Fuels Tax Division
Revenue Tax Evasion Project position funds ..... 276(28.15)
Refundable sales to State Public School Fund ..... 276(7.51a)–(7.51c); 345(7)
Reports –*see* that heading
Sales and use tax local distribution ..... 276(33.19)
Secretary's salary ..... 276(29.2)
Streamlined agreements ..... 276(33.16)–(33.18)
Tax collection assistance fee ..... 276(22.6a)–(22.6b); 345(37)
Taxing jurisdictions database ..... 276(33.18)
Revenue Laws Study Committee—sales and use tax issues study ..... 276(33.32)
Richmond County
Divide prosecutorial district 20 ..... 276(14.2l)–(14.2q)
Superior Court District 20A and 20B realigned and judges added ..... 276(14.2a)–(14.2e2)
Roads and Highways
Authorized Turnpike Authority projects increased ..... 275(2)
Business/farm relocation assistance expenses 331
Condemnation authority for Holly Springs 57
District engineer may sign voluntary annexation petition for right-of-way in Knightdale ..... 433(8a)–(8b)
Economic development, spot safety, and transportation improvement program projects funds ..... 276(28.27)
Excess overweight/oversize fees use ..... 276(28.5)
Herbert C. Bonner Bridge replacement ..... 275(6); 382(3)
Hunting from public right-of-way prohibited in Vance County ..... 31(1)–(3)
Hurricane evacuation standard ..... 275(5)
Medium custody road crew compensation ..... 276(17.11a)
Moving ahead projects ..... 276(28.23a)–(28.23d)
Oversize/overweight vehicles 361
Performance-based maintenance contracts for Transportation Dept. ..... 276(28.10)
Petition procedure for street lighting for Belmont 111
Pilot toll bridge project accelerated ..... 275(3)
Private pilot toll project ..... 275(4)
Public utilities/cable tv system access to public rights-of-way 286
Restrictions for persons soliciting on highways and streets in Burlington 30
Secondary road improvements 404
Small construction and contingency funds ..... 276(28.4)
Solicitation on State highways restriction/prohibition by local government 310

Roads and Highways—continued
State road system definition clarification ..... 382(1)
State street/highway annual municipal work plans ..... 382(2)
Tollways on federally funded interstates ..... 276(28.21a)–(28.21b)
Traffic control cameras pilot program for Charlotte extension 27
Transportation productivity pilot programs continuation ..... 276(28.9a)–(28.9b)
Trash trucks may stop on pavement outside municipal limits in Brunswick Counties 266
Unsafe or obsolete field facilities funds ..... 276(28.6)
Visitor center in Transylvania County ..... 276(28.16); 345(38)
Way-finding signs
Blue Ridge National Heritage Area ..... 276(28.14b)
Roanoke Voyages Corridor Commission ..... 276(28.14a)
Roanoke Island Commission
Appointments and membership ..... 421(1.44), (2.46)
Appropriations--current operations ..... 276(2.1)
Roanoke Rapids, City of
Annexation ..... 9(1)
Bidding exemption ..... 174(3a)–(3c)
Design-build contract for fire station ..... 174(2a)–(2b)
Extraterritorial jurisdiction extension ..... 9(2)–(3)
Music/entertainment complex funds ..... 276(13.6B)
Occupancy tax 46
Roanoke River Basin Advisory Committee—appointments and membership ..... 37(2)–(3)
Robeson County
Delinquent property tax collection procedure 109
Hurricane recovery 1
Pembroke, Town of –*see* that heading
Rockingham County
Board of Education election 307
Eden, City of –*see* that heading
Hurricane recovery 1
Occupancy tax ..... 233(5)
Reidsville, Town of –*see* that heading
Rocky Mount, City of—Children's Museum grassroots science program grant-in-aid ..... 276(12.5a)
Rose Hill, Town of—golf cart regulation ..... 11(1)
Rowan County
East Spencer, Town of –*see* that heading
Kannapolis, City of –*see* that heading
Landis, Town of –*see* that heading
Spencer, Town of –*see* that heading
Rules Review Commission
Appointments and membership ..... 421(1.45), (2.47)
Transportation projects rules, policies, and guidelines analysis and approval ..... 276(28.8a)–(28.8b)

Rural Economic Development Center
Appropriations
Allocations ..... 276(13.11a)–(13.12g)
Current operations ..... 276(2.1)
E-NC Authority allocation ..... 276(13.12f)
Opportunities Industrialization centers ..... 276(13.13a)–(13.13c)
Small Town Building Reuse and Restoration Program ..... 1(5.1g)
Distressed areas demonstration grants ..... 276(5.2f)
Regional education networks feasibility study ..... 276(7.42)
Reports –*see* that heading
Rutherford County
Divide District Court district 29 ..... 276(14.2f)–(14.2k)
Divide prosecutorial district 29 ..... 276(14.2l)–(14.2q)
Forest City, Town of –*see* that heading
Hickory Nut Gorge/Chimney Rock added to State Parks System 26
Hurricane recovery 1
Rutherford Airport Authority property lease 105
Rutherfordton, Town of –*see* that heading
Superior Court District 29 divided ..... 276(14.2a)–(14.2e2)
Rutherfordton, Town of—Kidsenses grassroots science program grant-in-aid ..... 276(12.5a)

S

Safety
All terrain vehicle regulation 282
Boiler act changes ..... 453(1)–(14)
Fore-hire motor carrier safety amendment 64
Mine safety and education programs fee ..... 276(42.2a)–(42.2b); 345(48a)–(48b)
Passenger tramway safety enhancement 347
Personal watercraft operator minimum age 161
Safety and Health Review Board—name change to Occupational Safety and Health Review Commission 133
Salaries and Benefits
ABC Commission Chair's salary ..... 276(29.3)
Administrative Officer of the Courts' salary ..... 276(29.4a)
Agency for Public Telecommunications Executive Director's salary ..... 276(29.3)
Agricultural Finance Authority Executive Director's salary ..... 276(29.3)
Appeals Court Chief Judge's salary ..... 276(29.4a)
Assistant Administrative Officer of the Courts' salary ..... 276(29.4a)
Assistant and deputy clerks of court salaries ..... 276(29.6)
Assistant district attorneys' salaries ..... 276(29.4b)
Assistant public defenders' salaries ..... 276(29.4b)

Salaries and Benefits—continued
Associate Justice salaries ..... 276(29.4a)
Attorney General's salary ..... 276(29.1b)
Banking Commissioner's salary ..... 276(29.3)
Central office school salaries ..... 276(7.3a)–(7.3f)
Certified school personnel bonus ..... 276(7.5); 345(5)
Chief Information Officer's salary ..... 276(29.3)
Chief Justice's salary ..... 276(29.4a)
Clerks of Court
Longevity pay ..... 276(29.23B)
Salaries ..... 276(29.5)
Coastal Management Division of DENR salaries ..... 276(29.21)
Commissioner of Agriculture's salary ..... 276(29.1b)
Commissioner of DMV's salary ..... 276(29.3)
Commissioner of Insurance's salary ..... 276(29.1b)
Commissioner of Labor's salary ..... 276(29.1b)
Community colleges
Faculty and professional staff salaries ..... 276(8.3a)–(8.3g)
Personnel salaries ..... 276(29.11)
Corrections Dept. education personnel salary supplements ..... 276(29.19c)
Council of State's salaries ..... 276(29.1b)
Court of Appeals Judges' salaries ..... 276(29.4a)
Death benefits act definition for emergency workers ..... 276(29.30C)
DHHS education personnel salary supplements ..... 276(29.19a)–(29.19b)
District Court
Chief Judge's salary ..... 276(29.4a)
Judges' salaries ..... 276(29.4a)
Employment Security Commission
Chair's prospective salary change ..... 276(29.20Aa)–(29.20Ab)
Chair's salary ..... 276(29.3); 345(41)
Exemptions from Wage and Hour Act expanded ..... 453(15)
Governor's salary ..... 276(29.1a)
Holiday pay for correction staff ..... 276(17.3)
Industrial Commission salaries ..... 276(29.20a)–(29.20b)
Judicial Dept. employee salaries ..... 276(29.4c)–(29.4d)
Legislative employees' salaries ..... 276(29.10)
Lieutenant Governor's salary ..... 276(29.1b)
Magistrates' salaries ..... 276(29.7a)–(29.7b)
Museum of Art Director's salary ..... 276(29.3)
Noncertified school personnel salaries ..... 276(7.4a)–(7.4d)
Notification before changing wages ..... 453(21)
Parole Commission Chair's salary ..... 276(29.3)
Parole Commission members' salaries ..... 276(29.3); 345(39)
Per diem and mileage
Property Tax Commission ..... 276(22.5a)–(22.5b)
Real Estate Commission ..... 374(1)

Salaries and Benefits—continued
Principal Clerks' salaries ..... 276(19B.1), (29.8); 345(40)
Reimbursement for use of personal vehicles by Judicial Department ..... 276(14.21)
Resource prosecutor longevity pay ..... 276(29.23A)
Salary adjustment fund ..... 276(29.15a)–(29.15e)
Salary-related employer contributions ..... 276(29.24a)–(29.24e)
School employee salary study ..... 276(7.47)
School-based administrator salary schedule ..... 276(7.2a)–(7.2i)
Secretary of Administration's salary ..... 276(29.2)
Secretary of Commerce's salary ..... 276(29.2)
Secretary of Correction's salary ..... 276(29.2)
Secretary of Crime Control's salary ..... 276(29.2)
Secretary of Cultural Resource's salary ..... 276(29.2)
Secretary of DENR's salary ..... 276(29.2)
Secretary of DHHS's salary ..... 276(29.2)
Secretary of Juvenile Justice and Delinquency Prevention's salary ..... 276(29.2)
Secretary of Revenue's salary ..... 276(29.2)
Secretary of State's salary ..... 276(29.1b)
Secretary of Transportation's salary ..... 276(29.2)
Senior Resident Superior Court Judge's salary ..... 276(29.4a)
Sergeants-at-Arms' and Reading Clerks' salaries ..... 276(29.9)
Specialized positions competitive salaries in Transportation Dept. ..... 276(28.11e)
State Auditor's salary ..... 276(29.1b)
State Controller's salary ..... 276(29.3)
State employees
Fair minimum wage ..... 276(29.18a)–(29.18c)
Generally ..... 276(29.13a)–(29.13e), (29.14a)–(29.14f)
Special annual leave bonus ..... 276(29.14Aa)–(29.14Ab)
State investment officer position incentive bonus ..... 276(27.3)
State Personnel Director's salary ..... 276(29.3)
State Treasurer's salary ..... 276(29.1b)
Superintendent of Public Instruction's salary ..... 276(29.1b)
Superior Court Judges' salaries ..... 276(29.4a)
Teachers' salaries ..... 276(7.1a)–(7.1h), (29.17)
UNC agricultural program employees salaries ..... 276(29.22)
UNC salaries ..... 276(29.12a)–(29.12b)
Uniform payroll system for State personnel ..... 276(6.19)
Utilities Commission
Chair's salary ..... 276(29.3)
Members' salaries ..... 276(29.3)
Vacation pay changes ..... 453(20)

Salaries and Benefits—continued
Wage complaint investigation authority....453(22)
Wildlife Resources Commission salaries....276(29.16)
Withholding of wages....453(16)–(19)
Salemburg, Town of
Corporate limits clarified....84(1), (6)
Town acts and elections validated....84(2)–(5)
Sales and Leases
Convey property at private sale
Kernersville....433(7a)–(7c)
Laurinburg....6
Sunset on certain property repealed for Mecklenburg County....158
Weldon....174(1a)–(1b)
Conveyance of property for a prison by North Wilkesboro....258
Early termination of agreements by military personnel....445(4.1)–(4.2)
Lease purchase and installment purchase activity monitoring....276(6.17a)–(6.17b)
Local government property electronic purchase and sale....227
No funds for leased equipment that no longer exists....276(6.27)
Sale of UNC-Asheville chancellor's residence....276(9.12)
Saltwater Fishing Fund Board of Trustees—repealed....455(2.4)
Sampson County
Clinton, City of –*see* that heading
Salemburg, Town of –*see* that heading
TANF electing county....276(10.51b)
Sanford, City of—public-private reimbursement agreements for infrastructure development....41
Sanitarian Examiners, State Board of—technical corrections and conforming changes....386(1.1)
Sanitation
Animal exhibits permitting and sanitation requirements....191
Set-off debt collection for certain entities....326
Satellite annexation–*see* Annexation
SBI (State Bureau of Investigation)–*see* Law Enforcement
Scholarships–*see* Higher Education; Tuition
School of Science and Mathematics, Board of Trustees–*see* University of North Carolina
Science and Technology
Funding from Biotechnology Center....276(13.10b)
Grassroots science program....276(12.5a)–(12.5b)
SBIR/STTR Incentive Program created....276(13.14b)
Science and Technology, Board of
Appointments and membership....421(1.47), (2.50)

Science and Technology, Board of—continued
SBIR/STTR Incentive Program created ..... 276(13.14b)
Summer science and math enrichment programs ..... 276(7.39a)–(7.39c)
Scotland County—hurricane recovery 1
Seafood and Aquaculture, Joint Legislative Commission on—appointments and membership ..... 386(6)
Seafood Industrial Park Authority—appointments and membership ..... 421(1.46), (2.48)
Secondary Education–*see* Education
Secretary of State
Appropriations
Current operations ..... 276(2.1)
Electronic Notary Act implementation ..... 391(4)
Charitable solicitations violations position ..... 276(23.1)
Lobbying
Electronic report filing ..... 456(4)
Executive branch lobbyist registration ..... 456(2)
No gifts registry ..... 456(3)
Registration ..... 456(1)
Reporting requirements ..... 456(1)
Manufacturing redevelopment districts 462
Salary ..... 276(29.1b)
Trademark violations position ..... 276(23.1)
Uniform Commercial Code Division
Vacant position reassigned ..... 276(23.1)
Uniform Real Property Electronic Recording Act ..... 391(1)–(2)
Securities—transfer on death 411
Security Services
Notification to Winston-Salem police when providing on-site services within jurisdiction 110
Probationary and registered regular private protective service employees ..... 211(1)
Sedalia, Town of—Charlotte Hawkins Brown State Historic Site capital funds ..... 276(30.6b)
Sedimentation Pollution Control Act ..... 386(7.1)–(7.3)
Sentencing (*see also* Courts; Crimes; Fines and Penalties)
Community Service Work Program integration into Div. of Community Corrections report ..... 276(17.21)
Criminal Justice Partnership Program ..... 276(17.23a)–(17.23i)
Determination of aggravating factors (Blakely v. Washington) 145
Electronic monitoring
Device fee ..... 276(43.2a)–(43.2b)
GPS system monitoring of domestic violence and sex offenders pilot program report ..... 276(17.19b)
System report ..... 276(17.19a)
Probation stayed during appeal 339
Theft from construction site increased penalty 208

Sentencing (*see also* Courts; Crimes; Fines and Penalties)—continued
Violation of protective order aggravating factor in capital sentencing study ... 295
Sentencing and Policy Advisory Commission
Juvenile recidivism study ... 276(14.19a)–(14.19c)
Parole eligibility analysis ... 276(17.28a)–(17.28c)
Violation of protective order aggravating factor in capital sentencing study ... 295
Sex Offenses–*see* Crimes
Shallotte, Town of—satellite annexation cap removed ... 173
Sheriffs–*see* Law Enforcement
Sheriff's Education and Training Standards Commission—appointments and membership ... 421(1.48), (2.52)
Siler City, Town of—public-private reimbursement agreements for infrastructure development ... 41
Small Business—SBIR/STTR Incentive Program created ... 276(13.14b)
Small Employer Health Insurance Pool Board—appointments and membership ... 223(5)
Smart Start–*see* Health and Human Services, Department of (DHHS)
Social Services
School-based child and family team initiative collaboration ... 276(6.24a)–(6.24f)
Welfare –*see* that heading
Social Services Commission—technical corrections and conforming changes ... 276(10.42)
Social Services, Departments of (county)
Appropriations
Block grant funds ... 276(5.1a)
Child protective services funds ... 276(5.1a)
Child protective services staff funds ... 276(5.1r)
In-home services ... 276(5.1a)
Assessment responses in cases of reported abuse or neglect ... 55
Child abuse/neglect responsible individuals list creation ... 399
Expedite outcomes for child/family in welfare and appeals cases ... 398
Foster care services funds ... 276(5.1a)
Guidelines for awarding funds to private/public adoption agencies ... 276(5.1u)
Medicaid estate recovery to include real property liens ... 276(10.21Ca)–(10.21Cc)
Multiple response system ... 276(10.45a)–(10.45b)
N.C. FAST (Families Accessing Services through Technology) funds ... 276(5.1y)
Work First domestic violence plans ... 276(5.1p)

Social Work Certification and Licensure Board—
authority to employ personnel 129
Social Workers
Assault or injury against 101
Child protective services staff funds ..... 276(5.1r)
Child welfare training projects ..... 276(5.1s)
Liability insurance for school social worker transporting students 355
Soil Scientists, Board for Licensing of—
appointments and membership ..... 421(1.49), (2.51)
Soldier, Sailor, Marine, Airmen, and Guardsmen Support Act 445
Solid Waste–*see* Waste Management
Southeastern North Carolina Regional Economic Development Commission
Appointments and membership ..... 421(1.50), (2.53)
Appropriations ..... 276(13.6a)–(13.7b), (13.6C)
Reports –*see* that heading
Southern Dairy Compact Commission—
appointments and membership ..... 421(2.54)
Southern Shores, Town of—unregistered all-terrain vehicle use ..... 305(1)
Southport, City of—planning and zoning jurisdiction over Ports Authority property ..... 305(11a)–(11b)
Special Economic Zones
Multi-jurisdictional industrial park exception ..... 406(1)
Wanchese Seafood Industrial Park do not revert ..... 276(13.1a)
Spencer, Town of
Satellite annexation cap removed 173
Transportation Museum capital improvements to Back Shop ..... 276(28.20)
Sports (*see also* Hunting and Fishing)
Alcoholic beverage sales in major league sports facilities ..... 327(4)
Buddy Pelletier Surfing Foundation special plate ..... 216(1), (3)–(7)
Film company tax incentives ..... 345(47a)–(47e)
NASCAR Hall of Fame financing 68
Physical Education-Coaching Scholarship Loan Fund created ..... 276(9.31)
St. James, Town of—extraterritoriality ..... 305(2)
Stanly County
Divide prosecutorial district 20 ..... 276(14.2l)–(14.2q)
Superior Court District 20A and 20B realigned and judges added ..... 276(14.2a)–(14.2e2)
State Auditor
Appropriations--current operations ..... 276(2.1)
Child caring institutions overhead rates and reimbursements audit ..... 276(10.47a)
Salary ..... 276(29.1b)

State Bar, North Carolina
Annual membership fee increase....237(2)
Appeal of right from final order if Disciplinary Hearing Commission....237(1)
Appropriations
Death penalty training for indigent defense....276(14.8)
District bar late fee....396(2)
Interstate/international law firm registry....396(3)
Member surcharge for Public Campaign Fund....276(23A.1a)–(23A.1e)
Out-of-state attorney fees....396(1)
Statutory authority for certain fees....396(7)
State Bureau of Investigation (SBI)–*see* Law Enforcement
State Controller
Appropriations
Current operations....276(2.1)
Personnel and payroll system replacement....276(6.14)
Compliance reviews of State agencies....65
Lease purchase and installment purchase activity monitoring....276(6.17a)–(6.17b)
Multiyear information technology infrastructure maintenance contracts authorized....276(20A.1a)–(20A.1c)
Salary....276(29.3)
Uniform payroll system....276(6.19)
Vendor overpayments deposits and disbursements....276(25.1a)–(25.1e)
State Employees (*see also* Teachers and Education Administrators)
Banking Commission employees exempt....284
Charitable solicitations violations position in Secretary of State's office....276(23.1)
Contracted medical positions conversion in Correction Dept.....276(17.7a)–(17.7b)
Correction security staffing formulas....276(17.4a)–(17.4c)
Corrections unit management staffing study....276(17.17)
Deputy clerk of court position for Hyde County....345(30a)–(30b)
Establishment of private nonprofit corporations to support UNC....276(9.22)
Express DENR permit and certification review program positions....276(12.2c)–(12.2d)
Fuel Tax Compliance Division time-limited positions converted to permanent....276(22.3)
Indigent defense positions....345(28)
Medicare lookout program coordinator position....424(2)
Payroll deduction for employees' associations....276(6.35)
Receipt-supported positions....276(6.5)
Salaries and benefits –*see* that heading
Staffing analysis follow-up for Retirement Systems Division....276(27.2a)

State Employees (*see also* Teachers and Education Administrators)—continued
State Disability Income Plan amendment effective date change ..... 276(29.30Ba)–(29.30Bb)
State employee vehicle use report change ..... 386(2.2)
Time-limited positions to implement Hurricane Recovery Act ..... 1(5.3)
Trademark violations position in Secretary of State's office ..... 276(23.1)
UNC tuition waiver program expansion ..... 276(9.25a)–(9.25b)
UNC-NCCCS joint teacher education and recruitment initiative positions ..... 276(9.3a)
State Infrastructure Council--repealed ..... 454(9)
State Lottery Act 344
State Personnel Commission—appointments and membership ..... 421(1.52), (2.57)
State Personnel, Office of
Personal service contracts reports ..... 276(6.38)
State Personnel Director's salary ..... 276(29.3)
State Property, Commission on
Appointments and membership ..... 421(1.54), (2.59)
Appropriations ..... 276(6.23)
State Symbols (*see also* Flags)
Display of official government flags 360
Fraser fir State Christmas tree ..... 387(1)
Official state dances 218
Seagrove designated birthplace of North Carolina pottery 78
Southern Appalachian brook trout State freshwater trout ..... 387(2)
Venus flytrap State carnivorous plant 74
State Treasurer
Appropriations
Current operations ..... 276(2.1)
Law enforcement officers', firemen's, rescue squad workers', and civil air patrol member's death benefit extended 376
Disproportionate share receipts disposition ..... 276(10.12a)–(10.12b)
GARVEE bonds issuance 403
Investment of hospital reserve funds 417
Investment of State/local funds in N.C. financial institutions 394
Lease purchase and installment purchase activity monitoring ..... 276(6.17a)–(6.17b)
Loan of funds to set up lottery ..... 344(15)
Reports –*see* that heading

State Treasurer—continued
Retirement Systems Division
Monthly workload statistics and productivity data ..... 276(27.2b)
Staffing analysis follow-up ..... 276(27.2a)
Technology infrastructure enhancements ..... 276(27.1)
Salary ..... 276(29.1b)
State Veterinarian—contagious animal disease provisions
sunset extension 21
Statesville, City of
Carolina Raptor Center grassroots science program
grant-in-aid ..... 276(12.5a)
Demolition of structures in historic district 143
TSECMMP participation by Success Institute 317
TSERS participation by Success Institute 317
Stokes County
Hurricane recovery 1
TANF electing county ..... 276(10.51b)
Storage Systems
Marking requirement for dyed fuel storage facility ..... 435(18)
Underground storage tanks
Sunset removed ..... 365(2)
Technical corrections, clarifying and conforming
changes 365
Students–*see* Education; Higher Education
Studies
Accreditation of residential treatment facilities
feasibility ..... 276(10.35Aa)–(10.35Ab)
Advocacy programs study continuation ..... 276(19.1)
Alcohol and drug education traffic schools outcomes
evaluation ..... 312(4)
Alternative funding for Industrial Commission ..... 276(13.6A)
Bill Lee Act and Job Development Investment
Grant Program ..... 241(8)
Child care subsidy reimbursement system analysis ..... 276(10.66a)–(10.66b)
Cleveland Correctional Center minimum security
conversion ..... 276(17.18)
Community alternative programs reimbursement
system ..... 276(10.20a)–(10.20b)
Community health center, rural health center funding ..... 276(10.9d)
Conservation easements stewardship ..... 276(6.22)
Coordination of children's services ..... 276(10.25i)–(10.25m)
Corrections unit management staffing ..... 276(17.17)
Court fees and funds collection by electronic and
online payment feasibility ..... 276(14.5)
Criminal records checks fee adjustment ..... 276(15.5b)
Defibrillators in public buildings ..... 276(10.57a)–(10.57c)
Difficult to place children adoption incentives ..... 276(10.49)
Distance education ..... 276(9.7)

Studies—continued
DNA testing and analysis costs ....276(15.8)
Domestic violence issues 356
Drop-in/short-term child care ....416(3.1)
Early literacy project incorporation in More at Four....276(10.67g)
Family court in district 10 feasibility ....276(14.18)
Family court model study ....356(4)
Ferry boat operator training feasibility .... 276(8.7a)–(8.7b)
Global climate change ....442(5)
Health Care Personnel Registry....276(10.40Aq)
Higher education strategy study extended....276(9.18)
Horace Williams Airport ....276(9.15)
Infrastructure information collection and management methods .... 276(6.33a)–(6.33b)
Inmate health care cost containment .... 276(17.15a)–(17.15d)
In-state teacher tuition benefit ....276(9.35)
Juvenile detention centers....276(16.9)
Juvenile recidivism .... 276(14.19a)–(14.19c)
Medicaid personal care services .... 276(10.19a)–(10.19b)
Medicaid/Medicare dual eligibility .... 276(10.21E)
Medication aides .... 276(10.40Da)–(10.40Df)
Online motor vehicle dealer registration enhancement .... 276(28.22a)–(28.22b)
Overhead cost recovery .... 276(6.6b)–(6.6c)
Oversight and monitoring of mental health services....276(10.34)
Phaseout of MTBE use in motor fuels regional approach .... 93(2)–(4)
Preventive and protective flooding measures.... 1(7a)–(7c)
Probation/parole officer workload study .... 276(17.20b)–(17.20c)
Professional services reverse auction ....370(3)
Psuedoephedrine use in methamphetamine manufacturing....434(8)
Public disclosure of economic development efforts....429(3)
Public Instruction liaison with military bases feasibility ....445(5)
Regional education networks feasibility....276(7.42)
Resources needed for schools for 21st century learners....276(7.43e)
Sales and use tax issues ....276(33.32)
School employee salary ....276(7.47)
School nurse issues ....276(7.38b)
School transportation....276(7.57); 345(8)
School-linked health centers....276(10.59Ga)–(10.59Gc)
Smart Start funding.... 276(10.65a)–(10.65b)
State laboratories consolidation.... 276(6.36a)–(6.36c); 345(4)
Tuition waiver exchange program feasibility....276(9.25b)
Water quality in drinking water supply reservoirs .... 190(2a)
Wireless 911 and emergency telephone system issues.... 439(11a)–(11b)
Workers' compensation disability benefits....448(1a)

Substance Abuse
Alcohol and drug education traffic schools ... 312
Appeals process for mh,dd,sas clients ... 276(10.35a)–(10.35b)
Certified criminal justice addictions professional ... 431
Community mh,dd,sas delivery procedures ... 276(10.31)
Community-based services funds ... 276(5.1a)
Comprehensive treatment services program for children continuation ... 276(10.25a)–(10.25m)
Coordination of children's services study ... 276(10.25i)–(10.25m)
Drug treatment court funds ... 345(29a)–(29b)
Duplicative school accreditation requirement repealed ... 155
Long term plan for meeting mh,dd,sas needs ... 276(10.24a)–(10.24c)
Regulatory changes to improve quality and safety of certain DHHS regulated facilities and services ... 276(10.40Aa)–(10.40Ar)
Residential corrections substance abuse treatment bed capacity increase ... 276(17.30)
Substance Abuse Professional Certification Board–*see* Substance Abuse Professional Practice Board
Substance Abuse Professional Practice Act ... 431
Substance Abuse Professional Practice Board
Appointments and membership ... 421(2.60); 431(3)
Certified criminal justice addictions professional ... 431
Expanded authority to include licensure ... 431
Name change from Substance Abuse Professional Certification Board ... 431(1)
Surety and Fidelity
Bail bondsmen denial of license review ... 240
Bail for methamphetamine manufacturing cases ... 434(6)
Hearing to determine source of appearance bond money/property ... 375
Kerosene supplier letter of credit in lieu of bond ... 435(21)
Local government finance officer performance bond increase ... 238(2)
Professional Employer Organization surety bond cancellation ... 124(1)
Surf City, Town of—satellite annexation cap removed ... 71
Surry County
Delinquent property tax collection procedure ... 109
Pilot Mountain, Town of –*see* that heading
Swain County
Hurricane recovery ... 1
Protection for North shore of Fontana Lake ... 97

T

Tabor City, Town of--annexation 8
Tar River—feasibility study ..... 276(30.3a)
Task Forces
Osteoporosis Prevention Task Force –*see* that heading
Taxes and Assessments
Equitable distribution tax consequences determination 353
Estate tax
Conformed to federal sunset ..... 144(8.1)–(8.3)
Excise tax
Insurance company changes ..... 276(38.4a)–(38.4d)
Motor fuel exemptions ..... 435(12)
Tobacco tax rate changes ..... 276(34.1a)–(34.1e)
Unsalable cigars refund ..... 406(2)
Wine tax proceeds for Grape Growers Council ..... 276(11.4)
Exemptions
Disaster Relief Reserve Fund disbursements ..... 1(5.6)–(5.7)
Food tax
Food and beverage tax for Monroe 261
Franchise tax
Local cable television franchise tax credit ..... 276(33.14)
Fuel tax
Destination tax on exported fuel ..... 435(13)
Exchange information on filed return ..... 435(14)
Manufacturing fuel sales and use tax ..... 276(33.20)–(33.22)
Motor fuel exemptions ..... 435(12)
Motor fuel tax changes ..... 435(1)–(23)
Pumper trucks and sweepers refund 377
Quarterly motor fuel refunds ..... 435(15)
Shipping document requirement ..... 435(16)–(17)
Highway use tax
Excluded in motor vehicle valuation 303
Income tax, corporate
Film company tax incentives ..... 276(39.1a)–(39.1g)
Insurance company changes ..... 276(38.4a)–(38.4d)
Income tax, individual
Tax credited to Political Parties Financing Fund ..... 345(46)
Tax rate change effective date ..... 276(36.1a)–(36.1b)
IRC update ..... 276(35.1a)–(35.1g)
Motor vehicle tax –*see* Property tax this heading
Carrboro ..... 306(1a)–(1c)
Public transportation funding for Black Mountain ..... 306(2a)–(2b)
Tax year modification ..... 313(8)–(9)
Occupancy tax
Belmont ..... 220(1)–(2)
Carteret County 120
Charlotte 68

Taxes and Assessments—continued
Occupancy tax—continued
Duplin County 53
Durham ..... 233(4.1)–(4.2)
Eden ..... 233(2)–(2c)
Elizabeth City 16
Franklin County ..... 233(1.1a)–(1.2c)
Halifax County 46
Madison County 118
Mecklenburg County 68
NASCAR Hall of Fame financing 68
Occupancy tax definitions change ..... 276(33.26)–(33.30)
Pasquotank County 16
Reidsville ..... 233(3)–(3c)
Roanoke Rapids 46
Rockingham County ..... 233(5)
Transylvania County increase 88
Troutman ..... 220(3)–(4)
Watauga County 197
West Jefferson 49
Payment of taxes by offset 134
Privilege tax –*see* Sales and use tax, this heading
Property tax
Alleghany County ..... 433(1a)–(2b)
Ashe County ..... 433(1a)–(2b)
Assessments without petition for Kill Devil Hills 142
Boundary settlement between Wilson and Greene Counties 259
Building permit prohibition for those with delinquent taxes in certain counties ..... 433(3a)–(3b)
Butner increase ..... 276(43.3a)–(43.3b); 345(49)
Cabarrus County motor vehicles ..... 116(1a)–(1b)
Collection and registration renewal system 294
Delinquent property tax collection procedure for certain counties 109
Highway use tax excluded in motor vehicle valuation 303
Penalties concerning electronic payment ..... 313(10)
Present-use value clarification ..... 313(1)–(7)
Tobacco buyouts count towards agricultural land tax exemptions 293
Winston-Salem motor vehicles 278
Sales and use tax
Aircraft parts and materials ..... 276(33.9)
Alcoholic beverages ..... 276(33.10), (33.26)–(33.30)
Broadcasting equipment ..... 276(33.9)
Candy ..... 276(33.10)

Taxes and Assessments—continued
Sales and use tax—continued
Certificate of resale ....276(33.15)
Computer supplies tax holiday ....276(33.11)
Construction materials ....276(33.8)
Dare County beach nourishment ....276(33.33)
Definitions ....276(33.3)
Effective date change ....276(33.1)
Farm machinery ....276(33.5), (33.9), (33.25)
Funeral expenses ....276(33.9)
Issues study ....276(33.32)
Laundry equipment ....276(33.9)
LEA sales tax refund reporting ....276(7.27a)–(7.27c)
Local distribution ....276(33.19)
Manufacturing fuel ....276(33.20)–(33.22)
One-half cent state sales tax sunset extended ....144(9.1)–(9.2)
Rail cars and locomotives refund ....276(33.12)
Rate changes for services effective date ....276(33.13)
Recycling equipment ....276(33.20)–(33.22)
Refund for air carrier aviation fuel ....435(61)
Refund for aviation fuel for motor sports event travel ....435(61.1)
Refundable sales to State Public School Fund ....276(7.51a)–(7.51c); 345(7)
Satellite broadcast services ....276(33.4a)–(33.4b), (33.23)
Streamlined agreements ....276(33.16)–(33.18), (33.24), (33.31)
Tobacco tax rate changes ....276(34.1a)–(34.1e)
Transfer for Wildlife Resources Commission salaries ....276(29.16)
Voicemail ....276(33.6)–(33.7)
Tax collection
Collection assistance fee ....276(22.6a)–(22.6b); 345(37)
Debt fee for taxpayer locator services and collection ....276(22.1a)–(22.1b)
Enhanced compliance, enforcement, and collection efforts report ....276(22.4)
Revenue Tax Evasion Project position funds ....276(28.15)
Tax collector appointed post for Henderson County ....305(8a)–(8c)
Time-limited positions converted to permanent ....276(22.3)
Tax credits
Film company tax incentives ....276(39.1a)–(39.1g); 345(47a)–(47e)
Local cable television franchise taxes ....276(33.14)
Motor fuel tax payment ....435(3)–(4)

Taxes and Assessments—continued
Tax credits—continued
William S. Lee Quality Jobs and Business Expansion Act extension ... 241
Tax exemptions
Computer supplies tax holiday ... 276(33.11)
Tobacco buyouts count towards agricultural land tax exemptions ... 293
Tax refunds
LEA sales tax refund reporting ... 276(7.27a)–(7.27c)
Pumper trucks and sweepers fuel tax ... 377
Quarterly motor fuel refunds ... 435(15)
Rail cars and locomotives sales and use tax ... 276(33.12)
Unsalable cigars excise tax refund ... 406(2)
Tax returns
Motor fuel exchange information on filed return ... 435(14)
Tax withholding
Lottery winnings ... 276(31.1bb)
Technical corrections and conforming changes ... 435
Taylorsville, Town of—satellite annexation cap removed ... 52
Teacher Academy, Board of Trustees—appointments and membership ... 421(1.55), (2.61)
Teachers and Education Administrators
Administrator certification clarification ... 179
Administrator training programs reporting requirement ... 276(9.23)
Education growth plans and 2 + 2 programs ... 276(9.2a)–(9.2b)
Future Teachers of North Carolina Scholarship Loan Fund created ... 276(9.11a)–(9.11b)
In-state teacher tuition benefit study ... 276(9.35)
International exchange teachers ... 276(7.22a)–(7.22b)
Lateral entry
Certification training programs ... 198(2)–(4)
Provisional certificate ... 198(1)
Low-wealth counties supplemental funding ... 276(7.6a)–(7.6j)
Masters in school administration standards review ... 276(7.28)
Mentor teaching program
Effectiveness ... 276(7.21d)
Funds for full time mentors ... 276(7.21a)
Retention results ... 276(7.21c)
Training standards ... 276(7.21b)
Planning time ... 276(7.30)
Professional development program for public school employees evaluation ... 276(9.34a)–(9.34b)
Prospective teacher scholarship loan fund transferred to Education Assistance Authority ... 276(9.17a)–(9.17c)
Retired teachers returning to classroom sunset extended ... 144(7A.1)–(7A.5)
Retirement –*see* that heading

Teachers and Education Administrators—continued
Salaries and benefits –*see* that heading
SAT score use to enter teacher ed programs 419
School employee salary study .....276(7.47)
School principals evaluation.....276(7.29)
Seclusion and restraint use clarification ..... 205(2), (5)–(6)
Student behavior management training .....205(3)–(4)
Teacher assistants may work while completing student teaching 302
Teachers' and State Employees' Comprehensive Major Medical Plan (TSECMMP) –*see* Insurance
Teachers' and State Employees' Retirement System (TSERS) –*see* Retirement
UNC-NCCCS joint teacher education and recruitment initiative..... 276(9.3a)–(9.3c)
Working conditions survey..... 276(7.40a)–(7.40b)
Teachers' and State Employees' Comprehensive Major Medical Plan (TSECMMP)–*see* Insurance
Teachers' and State Employees' Comprehensive Major Medical Plan, Board of Trustees
Appointments and membership .....421(1.56), (2.62)
Executive Director may designate certain staff as exempt ..... 276(29.34a)–(29.34c)
Optional health plans ..... 276(29.33a)–(29.33d)
Teachers' and State Employees' Retirement System, Board of Trustees
Appointments and membership .....421(1.57), (2.63)
Teachers' and State Employees' Retirement System (TSERS)–*see* Retirement
Teaching Fellows Commission
Appointments and membership .....421(1.59), (2.65)
Telecommunications
Broadcasting equipment sales and use tax .....276(33.9)
Competitive broadband encouragement 95
Emergency telephone system issues study ..... 439(11a)–(11b)
Infrastructure information collection and management methods study ..... 276(6.33a)–(6.33b)
Local cable television franchise tax credit .....276(33.14)
Public utilities/cable tv system access to public rights-of-way 286
Radio Emergency Associated Communications Teams exempt from solicitation laws 230
Regional education networks feasibility study.....276(7.42)
Satellite broadcast services sales and use tax ..... 276(33.4a)–(33.4b), (33.23)
Search warrants obtained by audio/video transmission..... 334
Universal service provider designation 385
Voicemail sales and use tax.....276(33.6)–(33.7)

Telecommunications—continued
Wireless 911 system
Enhanced wireless 911 plan ..... 439(3)
Wireless 911 and emergency telephone system issues study ..... 439(11a)–(11b)
Wireless surcharges ..... 439(4)–(5)
Television–*see* Telecommunications
Testing
Code officials examination fee ..... 289(1)
DNA testing and analysis costs study ..... 276(15.8)
High school exit exam requirement eliminated 458
Land surveyor licensure requirements 296
Plumbing and heating contractor licensure 131
PSAT purchase law amendment 154
Public transportation operator positive drug test notification 156
Rape kit backlog reduction ..... 276(15.7a)–(15.7c)
Standardized education tests minimized time ..... 276(7.37)
Third-party licensure testing for Dental Board ..... 366(1)–(2)
Testing Services–*see* Laboratories; Testing
Therapeutic Recreation Certification, State Board of–*see* Recreational Therapy Licensure, Board of
Therapeutic Recreation Personnel Certification Act 378
Thomasville, City of--deannexation 108
Tobacco
Biometric ID for purchasers of tobacco products ..... 350(6a)–(6b)
Buyouts count towards agricultural land tax exemptions 293
Local health department smoking restrictions 19; 168
Smoking regulation exemption for large indoor arenas 239
Tax rate changes ..... 276(34.1a)–(34.1e)
Tobacco Reserve Fund –*see* Funds and Accounts
Unsalable cigars excise tax refund ..... 406(2)
Tobaccoville, Village of--deannexation 51
Toll Roads and Bridges–*see* Roads and Highways
Tort Claims Act 243
Torts
Certain claims allowed involving Highway Patrol officers 243
Certain litigation expenses to be paid by client agencies/entities ..... 276(15.3)
Distribution of unpaid residuals in class action litigation 420
Towing–*see* Motor Vehicles
Traffic Law Enforcement–*see* Law Enforcement
Traffic Offenses–*see* Crimes; Motor Vehicles
Transportation
Industrial Development Fund use for transportation infrastructure ..... 276(13.5)

Transportation—continued
Metropolitan planning organization representation on regional transportation authority boards ... 322
Railroads –*see* that heading
School transportation study ... 276(7.57); 345(8)
Technical corrections and conforming changes ... 418(9)
Transportation corridor maps adoption by Turnpike Authority ... 275(1)
Transportation, Department of
Appropriations
Aviation continuation ... 276(28.12)
Beaver damage control funds ... 276(28.18)
Current operations ... 276(2.1)
Economic development, spot safety, and transportation improvement program projects ... 276(28.27)
Moving ahead projects ... 276(28.23a)–(28.23d)
Small construction and contingency funds ... 276(28.4)
Tall ships event ... 276(28.28)
Trade show transportation services ... 276(28.2)
Transportation Museum capital improvements to Back Shop ... 276(28.20)
Unsafe or obsolete field facilities ... 276(28.6)
Visitor center in Transylvania County ... 276(28.16); 345(38)
Business/farm relocation assistance expenses ... 331
Community work crews ... 276(17.11b)
District engineer may sign voluntary annexation petition for right-of-way in Knightdale ... 433(8a)–(8b)
Energy credits program participation ... 413(2)
Excess overweight/oversize fees use ... 276(28.5)
Falsification of highway inspection or test report unlawful ... 96
Federal aid acts Gov Ops consultation removed ... 276(28.1)
Fee increases ... 276(44.1a)–(44.1s)
GARVEE bonds issuance ... 403
Herbert C. Bonner Bridge replacement accelerated ... 275(6)
Highway Fund
Availability ... 276(3.2), (28.3a)
Aviation appropriations continuation ... 276(28.12)
Secondary road improvements ... 404
Highway Patrol –*see* Law Enforcement
Highway Trust Fund
Availability ... 276(28.3b)
Revenue Tax Evasion Project position funds ... 276(28.15)
Secondary road improvements ... 404
House mover regulation ... 354
Incentive pay pilot project in Project Development and Environmental Analysis branch ... 276(28.11f)
Medium custody road crew compensation ... 276(17.11a)

Transportation, Department of—continued
Motor carrier enforcement civilian inspection enforcement teams pilot program ..... 276(28.24a)–(28.24b)
Motor carrier enforcement officer transitional training ..... 276(28.13)
Moving ahead projects ..... 276(28.23a)–(28.23d)
NC Railroad dividends use ..... 276(28.7)
Oversize/overweight vehicles 361
Performance-based maintenance contracts ..... 276(28.10)
Productivity pilot programs continuation ..... 276(28.9a)–(28.9b)
Purchase of alternative-fueled vehicles with energy credit program funds ..... 413(2)
Rail Division
Deep channel port and collateral rail requirements needs assessment ..... 276(28.26a)–(28.26b)
Real-time weigh-in-motion data sharing ..... 276(28.25a)–(28.25b)
Reorganization ..... 276(28.11a)–(28.11f)
Secondary road improvements 404
Secretary
Salary ..... 276(29.2)
Specialized positions competitive salaries ..... 276(28.11e)
State employee vehicle use report change ..... 386(2.2)
Tollways on federally funded interstates ..... 276(28.21a)–(28.21b)
Transportation Museum capital improvements to Back Shop ..... 276(28.20)
Transportation projects rules, policies, and guidelines analysis and approval ..... 276(28.8a)–(28.8b)
Way-finding signs for Blue Ridge National Heritage Area ..... 276(28.14b)
Way-finding signs for Roanoke Voyages Corridor Commission ..... 276(28.14a)
Transportation Oversight Committee, Joint Legislative—online dealer registration enhancement study ..... 276(28.22a)–(28.22b)
Transylvania County
Divide District Court district 29 ..... 276(14.2f)–(14.2k)
Divide prosecutorial district 29 ..... 276(14.2l)–(14.2q)
Hurricane recovery 1
Occupancy tax 88
Superior Court District 29 divided ..... 276(14.2a)–(14.2e2)
Visitor center in Staton Road funds ..... 276(28.16); 345(38)
Travel and Tourism
Agritourism liability limits 236
Capital area visitor's center funds ..... 276(30.2)
Occupancy tax
Belmont ..... 220(1)–(2)
Carteret County 120

Travel and Tourism—continued
Occupancy tax—continued
Definition changes....276(33.26)–(33.30)
Duplin County....53
Durham....233(4.1)–(4.2)
Eden....233(2)–(2c)
Elizabeth City....16
Franklin County....233(1.1a)–(1.2c)
Halifax County....46
Madison County....118
Pasquotank County....16
Reidsville....233(3)–(3c)
Roanoke Rapids....46
Rockingham County....233(5)
Transylvania County....88
Troutman....220(3)–(4)
Watauga County....197
West Jefferson....49
Project development financing for tourism projects....407
Roanoke Rapids music/entertainment complex funds....276(13.6B)
Tourism Development Authorities....233(1.1c)–(1.2c)
Belmont....220(1c)–(2)
Duplin County....53
Elizabeth City....16
Halifax County....46
Madison County....118
Roanoke Rapids....46
Rockingham County....233(2c)–(3c), (5)
Troutman....220(3c)–(4)
Watauga County....197
West Jefferson....49
Tourism promotion grants....276(13.3a)–(13.3c)
Tribal Government
Health disparities initiative....345(19)
Hunting and fishing on tribal lands without a license....285
Troutman, Town of
LGERS participation....279
Occupancy tax....220(3)–(4)
Trust Companies and Interstate Trust Business Act....269
Trusts and Estates
Affiliated trust agency account transfers and agency appointments....274
Child's allowance clarification....225
Commissions allowed personal representatives....388
Equitable distribution order of payment....180
Out-of-state/foreign trust companies without presence in state....269
Real estate broker duties regarding trust monies....374(2)

Trusts and Estates—continued
Recommendation of guardian for incompetent adult ... 333
Securities transfer on death ... 411
Technical corrections and conforming changes ... 269
Uniform Trust Code revision ... 192
Unitrust laws amended ... 244
Tryon Palace Commission
Reports –*see* that heading
Tuition
Escheat Fund investment program for benefit of needy higher education students ... 252
In-state tuition
Discharged military and dependants ... 345(14)
Retired military personnel and dependents ... 445(7)
Teacher benefit study ... 276(9.35)
National Guard assistance program ... 444
Need-based financial aid programs funds ... 276(9.6a)–(9.6d); 345(11)
Need-based scholarship loan administration changes ... 40
Physical Education-Coaching Scholarship Loan Fund created ... 276(9.31)
Prospective teacher scholarship loan fund transferred to Education Assistance Authority ... 276(9.17a)–(9.17c)
Scholarship students as residents ... 276(9.27a)–(9.27b)
School of Science and Mathematics tuition grant ... 276(9.14a)–(9.14b)
Tuition free courses for early college and middle college program students ... 193
Tuition waiver for certain wards of the State ... 276(9.30a)–(9.30b)
UNC Board of Governors dental scholarships ... 276(9.9a)–(9.9b)
UNC Board of Governors medical scholarships ... 276(9.10a)–(9.10b)
UNC tuition waiver exchange program study ... 276(9.25b)
UNC tuition waiver program expansion ... 276(9.25a)–(9.25b)
Veterans scholarships funding from escheat fund ... 276(19.2)
Turnpike Authority
Appointments and membership ... 421(2.67)
Authorized projects increased ... 275(2)
Herbert C. Bonner Bridge replacement accelerated ... 275(6)
Hurricane evacuation standard ... 275(5)
Pilot toll bridge project accelerated ... 275(3)
Private pilot toll project ... 275(4)
Transportation corridor maps adoption ... 275(1)
Tyrrell County
Columbia, Town of –*see* that heading
Indigent defense positions ... 345(28)

U

Umstead Act 397
UNC Board of Governors
Appropriations
Capital funds ..... 276(30.2)
Center for craft, creativity, and design ..... 276(9.37)
Chancellor's residence at Fayetteville State ..... 276(30.6c)
Continuation budget ..... 201(3)
Current operations ..... 276(2.1); 345(1a)
Need-based financial aid programs transfer from Escheat Fund ..... 276(9.6a)–(9.6d)
Reserve for Repairs and Renovations allocation ..... 276(30.6a)–(30.6c)
Salaries ..... 276(29.12a)–(29.12b)
Brody School of Medicine family medical center ..... 276(9.26a)–(9.26d)
Budget reduction report ..... 276(9.1)
Construction and financing of capital improvement projects authorized 324
Dental scholarship program ..... 276(9.9a)–(9.9b)
Establishment of private nonprofit corporations to support institution ..... 276(9.22)
Future Teachers of North Carolina Scholarship Loan Fund created ..... 276(9.11a)–(9.11b)
High school credit policies for families of military personnel ..... 445(6)
High school innovation flexibility ..... 276(7.33a)–(7.33b)
Higher education strategy study extended ..... 276(9.18)
Learn and earn high school program evaluation ..... 276(7.32d)
Masters in school administration standards review ..... 276(7.28)
Medical scholarship program ..... 276(9.10a)–(9.10b)
Need-based scholarship loan administration changes 40
Physical Education-Coaching Scholarship Loan Fund created ..... 276(9.31)
Professional development program for public school employees evaluation ..... 276(9.34a)–(9.34b)
Reimbursement to Justice Dept. Board legal representation ..... 276(15.4)
Salaries ..... 276(29.12a)–(29.12b)
School administrator training programs reporting requirement ..... 276(9.23)
Teacher education growth plans and 2 + 2 programs ..... 276(9.2a)–(9.2b)
Tuition waiver exchange program study ..... 276(9.25b)
Tuition waiver program expansion ..... 276(9.25a)–(9.25b)
Umstead Act review panel created ..... 397(2)
Unemployment–*see* employment
Uniform Boiler and Pressure Vessel Act ..... 453(1)–(14)

Uniform Commercial Code 338
Uniform Real Property Electronic Recording Act ..... 391(1)–(2)
Uniform Trust Code 192
Union County
Divide District Court district 20 ..... 276(14.2f)–(14.2k); 345(27a)–(27c)
Divide prosecutorial district 20 ..... 276(14.2l)–(14.2q)
Hurricane recovery 1
Moving ahead transportation projects ..... 276(28.23c)
Volunteer fire departments funds ..... 345(35)
University of North Carolina
Academic Common Market program ..... 276(9.24)
Agricultural Extension Service
Appropriations ..... 276(2.1), (9.16); 345(12)
Agricultural Research Service
Appropriations ..... 276(2.1), (9.16); 345(12)
Appalachian State University
Appropriations--current operations ..... 276(2.1)
Construction and financing of capital improvement projects authorized 324
Beer and wine sales at certain university and county facilities ..... 327(1)–(3)
Board of Governors –*see* UNC Board of Governors
Bond project modifications ..... 276(9.13a)–(9.13f)
Budget reduction report ..... 276(9.1)
Construction and design supervisory authority 300
Distance education study ..... 276(9.7)
Distinguished Professors Endowment Trust Fund allocations ..... 276(9.21a)–(9.21c)
East Carolina University
Appropriations--current operations ..... 276(2.1)
Brody School of Medicine
Family medical center ..... 276(9.26a)–(9.26d)
Medicare receipts ..... 276(9.26a)
Construction and financing of capital improvement projects authorized 324
Elizabeth City State University
Appropriations--current operations ..... 276(2.1)
Construction and financing of capital improvement projects authorized 324
Mitchell-Lewis Residence Hall replacement ..... 276(9.13a)
Enrollment growth funding model review ..... 276(9.4)
Establishment of private nonprofit corporations to support institution ..... 276(9.22)

UNC Board of Governors—continued
Fayetteville State University
Appropriations
Chancellor's residence capital funds ..... 276(30.6c)
Current operations ..... 276(2.1)
Nursing education and research center special indebtedness ..... 276(30.3A)
Food programs enhanced nutrition ..... 276(9.28a)–(9.28b)
Higher education strategy study extended ..... 276(9.18)
Information technology procurement ..... 276(9.8)
In-state tuition for retired military personnel and dependents ..... 445(7)
Need-based financial aid programs funds ..... 276(9.6a)–(9.6d); 345(11)
North Carolina Agricultural & Technical State University
Agricultural program employees salaries ..... 276(29.22)
Appropriations
Agricultural and research extension ..... 276(9.16); 345(12)
Current operations ..... 276(2.1)
Joint millennium campus ..... 276(30.2)
Visual and performance arts building ..... 276(30.2)
Visual and performing arts building ..... 345(44)
Parking regulatory authority 165
North Carolina Central University
Appropriations--current operations ..... 276(2.1)
Construction and financing of capital improvement projects authorized 324
Eagleson Residence Hall renovation ..... 276(9.13b)
North Carolina Infrastructure Program contracts with other State agencies ..... 276(13.12c)
North Carolina School of Science and Mathematics
Admission for active duty military dependent ..... 445(8.1)–(8.2)
Appropriations--current operations ..... 276(2.1)
Board of Trustees appointments and membership ..... 421(2.49)
Summer science and math enrichment programs ..... 276(7.39a)–(7.39c)
Tuition grant ..... 276(9.14a)–(9.14b)
North Carolina School of the Arts
Appropriations--current operations ..... 276(2.1)
North Carolina State University
Agricultural program employees salaries ..... 276(29.22)
Appropriations
Current operations ..... 276(2.1)
Engineering complex III ..... 276(30.2)
Construction and financing of capital improvement projects authorized 324
Umstead Act exemption for dairy laboratory 20
Physical Education-Coaching Scholarship Loan Fund created ..... 276(9.31)

UNC Board of Governors—continued
Prospective teacher scholarship loan fund transferred to Education Assistance Authority ..... 276(9.17a)–(9.17c)
Public Television, UNC Center for, Board of Trustees –*see* that heading
Regional education networks feasibility study ..... 276(7.42)
Salaries ..... 276(29.12a)–(29.12b)
Scholarship students as residents ..... 276(9.27a)–(9.27b)
Service contract bid approval exemption 125
Teacher education growth plans and 2 + 2 programs ..... 276(9.2a)–(9.2b)
Tuition free courses for early college and middle college program students 193
Tuition waiver exchange program study ..... 276(9.25b)
Tuition waiver for certain wards of the State ..... 276(9.30a)–(9.30b)
Tuition waiver program expansion ..... 276(9.25a)–(9.25b)
Umstead Act exemptions ..... 397(1)
UNC Board of Governors –*see* that heading
UNC Hospitals at Chapel Hill
Advance planning of capital projects ..... 276(30.9)
Appropriations--current operations ..... 276(2.1); 345(1a)
UNC-Asheville
Appropriations--current operations ..... 276(2.1)
Center for craft, creativity, and design funds ..... 276(9.37)
Sale of chancellor's residence ..... 276(9.12)
UNC-Chapel Hill
Appropriations
Current operations ..... 276(2.1)
Renaissance computing institute ..... 276(30.2)
School of dentistry ..... 276(30.2)
UNC-CH Cares ..... 276(5.1a)
Construction and financing of capital improvement projects authorized 324
Horace Williams Airport operation and study ..... 276(9.15)
Investment of hospital reserve funds 417
Psychology student stipends ..... 276(5.1j)
Translational medicine program ..... 345(13)
UNC Hospitals at Chapel Hill –*see* that entry this heading
UNC-Charlotte
Appropriations--current operations ..... 276(2.1)
Construction and financing of capital improvement projects authorized 324
UNC-Greensboro
Appropriations
Current operations ..... 276(2.1)
Joint millennium campus ..... 276(30.2)
Construction and financing of capital improvement projects authorized 324

UNC Board of Governors—continued
UNC-NCCCS 2 + 2 E-Learning Initiative
funds use ..... 276(9.5)
UNC-NCCCS joint teacher education and
recruitment initiative ..... 276(9.3a)–(9.3c)
UNC-Pembroke
Appropriations--current operations ..... 276(2.1)
Biotechnology teaching labs and classrooms
building ..... 276(9.13d)
Campuswide infrastructure improvements ..... 276(9.13d)
Designated North Carolina's historically American
Indian university 153
North and Belk Residence Halls fire/safety
improvements ..... 276(9.13d)
West Residence Hall renovation ..... 276(9.13d)
UNC-Wilmington
Academic and classroom facilities ..... 276(9.13c)
Appropriations
Current operations ..... 276(2.1)
School of nursing ..... 276(30.2)
Construction and financing of capital improvement
projects authorized 324
Friday Hall Laboratory renovation ..... 276(9.13c)
General classroom building ..... 276(9.13c)
Hinton James Hall Classroom Building renovation ..... 276(9.13c)
Kenan Auditorium renovation ..... 276(9.13c)
King Hall Classroom Building renovation ..... 276(9.13c)
Western Carolina University
Appropriations--current operations ..... 276(2.1)
Construction and financing of capital improvement
projects authorized 324
Cullowhee fire truck grant ..... 276(9.29)
Killian Education & Allied Professional Building
renovation ..... 276(9.13e)
Old Student Health Center conversion ..... 276(9.13e)
Stillwell Lab Building renovation ..... 276(9.13e)
Wine tasting permits for viticulture/enology programs ..... 350(3a)–(3b)
Winston-Salem State University
Appropriations
Current operations ..... 276(2.1)
Laboratory facility planning ..... 276(30.2)
Construction and financing of capital improvement
projects authorized 324
Unregulated Vehicles–*see* Motor Vehicles
Urban Development
Bidding exemption for Roanoke Rapids ..... 174(3a)–(3c)
Demolition of structures in Statesville historic district 143
Food and beverage tax for Monroe 261

Urban Development—continued
Green square project authorization ... 255
Small Town Building Reuse and Restoration Program funds ... 1(5.1g)
Utilities
Competitive broadband encouragement ... 95
Conditioning services on electric service ... 150(1)
Conflict between authorized and unauthorized suppliers ... 150(5)
Corridor service rights outside cities ... 150(2)
Electric generating facilities not plumbing, heating or fire sprinkler contractors ... 289(3)
EMC limits on supplying electricity within city ... 150(6)–(7)
Infrastructure information collection and management methods study ... 276(6.33a)–(6.33b)
Mediation for disputes between EMCs and other electricity suppliers ... 150(8)
Notification to consumer of electricity supplier choice ... 150(4)
Public utilities/cable tv system access to public rights-of-way ... 286
Regulatory charge ... 276(40.2a)–(40.2c)
Supplying electricity to area outside corporate limits ... 150(3)
Umstead Act exemption for UNC ... 397(1)
Utilities Commission
Chair's salary ... 276(29.3)
Competitive broadband encouragement ... 95
Consolidated Judicial Retirement System participation ... 276(29.30Aa)–(29.30Ai); 345(42)
Member salaries ... 276(29.3)
Supplying electricity to area outside corporate limits ... 150(3)
Universal service provider designation ... 385
Utilities regulatory charge ... 276(40.2a)–(40.2c)
Utility Review Committee, Joint Legislative—Wireless 911 and emergency telephone system issues study ... 439(11a)–(11b)

V

Vaccines–*see* Public Health
Vance County
Henderson, City of –*see* that heading
Hunting from public right-of-way prohibited ... 31(1)–(3)
Hunting on registered lands increased fines ... 31(4)
John H. Kerr Reservoir operations evaluation ... 276(30.3a)
Mediation funds ... 276(14.16)
Victims Rights—Victims Assistance Network ... 276(18.2)
Virginia-North Carolina Interstate High-Speed Rail Compact Commission--appointments and membership ... 421(1.62), (2.68)

Vocational Education
Community Colleges Office lead agency for workforce development and adult education....77(1)
Customized Industry Training Program created....276(8.4a)–(8.4d)
Ferry boat operator training feasibility study....276(8.7a)–(8.7b)
Johnson and Wales University funds....276(13.6b)
Learn and earn high school program....276(7.32a)–(7.32d); 345(6a)–(6c)
Opportunities Industrialization centers funds....276(13.13a)–(13.13c)
Proprietary school licensing fee increase....276(8.14)
Trade Jobs for Success initiative reporting....276(13.4Aa)–(13.4Ab)
Training and reemployment contribution by employers sunset extended....276(8.8a)–(8.8b)
Work Central, Inc. funds....276(5.1x)
Volunteers—emergency services volunteer liability immunity....273
Voter Registration (*see also* Elections)
Administrative voter registration changes....428(3)
Automatic cancellation of old registration....428(9)
Correction of missing information on form....428(15)
Data access....428(10)
One-stop precinct transfers....428(6)
One-stop voting on election day pilot program for Orange County....256
Reinstatement of purged voter....428(14)

W

Waco, Town of—town center defined....199
Wage and Hour Act....453(15)–(23)
Wake County
Apex, Town of –*see* that heading
Cary, Town of –*see* that heading
Family court in district 10 feasibility study....276(14.18)
Garner, Town of –*see* that heading
Holly Springs, Town of –*see* that heading
Knightdale, Town of –*see* that heading
Mediation funds....276(14.16)
Moving ahead transportation projects....276(28.23b)
Occupancy tax definitions change....276(33.30)
Public defender funds....276(14.10)
Raleigh, City of –*see* that heading
Swift Creek Management Plan enforcement....89
Walkertown, Town of--deannexation....50
Warren County
John H. Kerr Reservoir operations evaluation....276(30.3a)
Mediation funds....276(14.16)

Warren County—continued
Warren National Guard armory asbestos/lead abatement....345(32)
Washington County
Electronic dog collar removal/destruction unlawful....305(4)
Indigent defense positions....345(28)
Tidewater Research Station capital improvement funds....276(11.2)
Waste Management
Abandoned/junk vehicles regulations in certain cities....10; 24; 25
Alcoholic beverage container recycling by some permit holders....348(1)–(2)
Disposal of certain recyclable containers prohibited....348(3)
Mercury switch recovery....384
Prohibited landfill items....362
Sludge management contracts....176
Trash trucks may stop on pavement outside municipal limits in Brunswick Counties....266
Watauga County
Blowing Rock, Town of –*see* that heading
Boone, Town of –*see* that heading
District U occupancy tax....197
Hurricane recovery....1
Water and Sewer Systems
Authority member per diem increase....127(2)
Clean water revolving loans and grants encumbered by real/personal property....238(11)
Condemnation authority for Holly Springs....57
Conditioning services on electric service....150(1)
Delinquent storm water fee collection procedure for certain counties....441(3a)–(3b)
Distressed community project funds....276(13.11e)
Exemptions from well contractors certification....386(9)
Federal drinking water act funds state match....276(12.1)
Infrastructure information collection and management methods study....276(6.33a)–(6.33b)
Neuse regional water & sewer authority....345(45)
Pumper trucks fuel tax refund....377
Revenue bonds for municipal water treatment facilities....249
Set-off debt collection for certain entities....326
Sludge management contracts....176
State-owned property may be transferred to another county district....127(1)
Water rates for Buncombe County....140
Water/wastewater project funds for certain counties....276(13.11b)
Water Infrastructure Commission, State—created....454(3)

Water Resources (*see also* Coastal Resources; Lakes and Rivers)
Aquatic weed control ..... 276(30.3a)
B. Everett Jordan water supply storage funds ..... 276(30.3a)
Cause of action filing under Sedimentation Pollution Control Act ..... 386(7.3)
Common criteria for Wastewater Reserve and Drinking Water Reserve ..... 454(3)
Conservation easements stewardship study ..... 276(6.22)
Currituck sound water management study ..... 276(30.3a)
Distressed community project funds ..... 276(13.11e)
Express DENR permit and certification reviews ..... 276(12.2a)–(12.2d)
Far Creek maintenance dredging ..... 276(30.3a)
Federal drinking water act funds state match ..... 276(12.1)
Hurricane Isabel emergency stream cleanup in Northeastern NC ..... 276(30.3a)
Hurricane stream restoration in Western NC ..... 276(30.3a)
John H. Kerr Reservoir operations evaluation ..... 276(30.3a)
Lower Lockwoods Folly River ..... 276(30.3a)
Neuse regional water & sewer authority ..... 345(45)
Nutrient control criteria and management strategy for drinking water supply reservoirs ..... 190(2b)–(3f)
Protection for North shore of Fontana Lake 97
Sedimentation control plan
30 Day filing requirement ..... 386(7.2)
Landowner's consent ..... 386(7.1)
Sedimentation education funds ..... 276(12.3)
State-local projects ..... 276(30.3a)
Stormwater pilot project report ..... 276(28.19)
Swan Quarter flood control dykes ..... 276(30.3a)
Water quality in drinking water supply reservoirs study ..... 190(2a)
Water resources development projects ..... 276(30.3a)–(30.3c); 345(44)
Water/wastewater project funds for certain counties ..... 276(13.11b)
Watha, Town of—mayor and town council's terms ..... 141(1)
Wayne County
Building permit prohibition for those with delinquent taxes ..... 433(3a)–(3b)
Cherry Research Farm capital improvement funds ..... 276(11.2)
Weapons
Computer-assisted remote hunting prohibited 62
Concealed handgun permit
Criminal records checks report ..... 276(15.5a)
Domestic violence victims 343
Private protective service employees requirements ..... 211(2)
Renewal extension for military personnel 232
Concealed weapons carry by law enforcement 337

Weapons—continued
Criminal records checks
Concealed handgun permits report....276(15.5a)
Fee adjustment study....276(15.5b)
Currituck deer hunting changes.... 15
Discharging weapon into occupied property increased penalty.... 461
Disposition of unclaimed/seized/confiscated firearm.... 287
Return of seized firearm in domestic violence case....423(2)–(3)
Seizure and destruction of firearm in Mecklenburg County.... 106
Weights and Measures—regulatory fees....276(42.1a)–(42.1j)
Weldon, Town of
Annexation....9(4)
Convey property at private sale.... 174(1a)–(1b)
Welfare
Expedite outcomes for child/family in welfare and appeals cases.... 398
TANF (Temporary Assistance to Needy Families)
Administration funds....276(5.1n)
After-school programs/services for at-risk children....276(5.1q), (5.1z)
Automation projects funds....276(5.1a)
Block grant funds....276(5.1a)
Boys and Girls Clubs funds....276(5.1w)
Child care subsidies....276(5.1a), (5.1l); 345(15)
Electing counties....276(10.51b)
FY2005-2007 State plan approved.... 276(10.51a)–(10.51c)
N.C. FAST (Families Accessing Services through Technology) funds....276(5.1y), (10.1e)
Strengthen fathers' participation....276(5.1z1)
Work Central, Inc. funds....276(5.1x)
Work First
Block grant funds....276(5.1a)
Domestic violence funds....276(5.1p)
Medicaid family assistance....276(10.11d)
Well Contractors Certification Commission
Appointments and membership....421(2.69)
Certification exemptions....386(9)
Wells–*see* Water and Sewer Systems
West Jefferson, Town of--occupancy tax.... 49
Western North Carolina Regional Economic Development Commission
Appointments and membership....421(1.63), (2.70)
Appropriations....276(13.6a)–(13.7b), (13.6C)
Reports –*see* that heading

Wildlife
Beaver damage control funds ..... 276(12.8), (28.18)
Black bear baiting prohibited 298
Carolina Raptor Center grassroots science program grant-in-aid ..... 276(12.5a)
Domestically propagated waterfowl and game birds for dog training 76
National Wild Turkey Federation special plate ..... 216(1), (3)–(7)
North Carolina Wildlife Habitat Foundation special plate ..... 216(1), (3)–(7)
Southern Appalachian brook trout State freshwater trout ..... 387(2)
Wildlife Resources Commission
Appointments and membership ..... 421(1.64), (2.71)
Beaver damage control funds ..... 276(12.8)
Coastal recreational fishing license
Funds ..... 276(12.4a)–(12.4c)
Implementation ..... 455(1.1)–(1.5)
Disabled sportsman program
Activities scheduling ..... 438(3)
Fees ..... 438(3)
Domestically propagated waterfowl and game birds for dog training 76
Hunting and fishing on tribal lands by tribal members without a license 285
Hunting licensure and education requirements for those under 16 ..... 438(1)–(2)
Hunting/fishing license information disclosure ..... 455(1.17)
Inland fishing licenses ..... 455(1.6)–(1.15)
License agents ..... 455(3.1)–(3.3)
Managed hunts minors licensing requirements 82
Marine Resources Fund and Marine Resources Endowment Fund disbursement ..... 455(2.1)–(2.10)
Obstruction of boat ramp fine limited 164
Personal watercraft operator minimum age 161
Salary increase from sales tax transfer ..... 276(29.16)
Wilkes County
Hurricane recovery 1
North Wilkesboro, Town of –*see* that heading
William S. Lee Quality Jobs and Business Expansion Act 241; 406
Wills and Estates–*see* Trusts and Estates
Wilmington, City of
Cape Fear Museum grassroots science program grant-in-aid ..... 276(12.5a)
Ports capital appropriation ..... 276(30.2)
UNC-Wilmington –*see* University of North Carolina

Wilmington, City of—continued
Wilmington Children's Museum grassroots science program grant-in-aid ..... 276(12.5a)
Wilmington harbor deepening and maintenance funds ..... 276(30.3a)
Wilson, City of—Imagination Station grassroots science program grant-in-aid ..... 276(12.5a)
Wilson County
Boundary settlement with Greene County 259
Hunting on private property prohibited without written permission 264
Wilson, City of –*see* that heading
Windsor, Town of—satellite annexation cap removed 71
Winston-Salem, City of
Motor vehicle privilege tax 278
North Carolina School of the Arts –*see* University of North Carolina
Notification to Winston-Salem police when providing on-site services within jurisdiction 110
Sci Works Science Center and Environmental Park grassroots science program grant-in-aid ..... 276(12.5a)
Winston-Salem State University –*see* University of North Carolina
Wireless 911 Board
Appointments and membership ..... 421(2.72); 439(2), (8)
Enhanced 911 plan ..... 439(3)
Members and public contracts ..... 439(2)
Unauthorized use of 911 funds ..... 439(7)
Wireless 911 Fund –*see* Funds and Accounts
Women
Abortion Fund limitations ..... 276(10.50)
Displaced homemakers
Centers ..... 405(2)–(3)
Changes 405
Historically underutilized business certification 270
Involvement of historically underutilized businesses in hurricane recovery ..... 1(5.8)
Mammogram coverage In TSECMMP ..... 276(29.31a), (29.31c)
Maternity homes funds ..... 276(5.1a), (5.1t)
Pregnancy prevention funds ..... 276(5.1a)
Pregnant women and children Medicaid coverage ..... 276(10.11m)
Residential corrections substance abuse treatment bed capacity increase ..... 276(17.30)
Women, Council For
Advocacy programs study continuation ..... 276(19.1)
Displaced homemakers
Centers ..... 405(2)–(3)
Changes 405

Women, Council For—continued
Rape crisis/victims' services funds ..... 276(5.1a)
Work First domestic violence plans ..... 276(5.1p)
Workers' Compensation–*see* Insurance
Workers' Compensation Benefits, Study Committee on—created ..... 448(1a)–(1e)
Wrightsville Beach, Town of—Board of Adjustment appointment according to general law 265

Y

Yadkin County—building permit prohibition for those with delinquent taxes ..... 433(3a)–(3b)
Yadkin/Pee Dee River Basin Advisory Commission—appointments and membership ..... 37(1)
Yancey County—hurricane recovery 1

Z

Zoos and Aquariums
Aquarium expansion debt service ..... 276(12.10)
North Carolina Aquarium Society special plate ..... 216(1)
Use of Special Zoo Fund for marketing ..... 386(5)

INDEX TO RESOLUTIONS
2005 GENERAL ASSEMBLY
REGULAR SESSION 2005

A

Adjournment
Reconvened session 59
Regular session 58
Alexander, Frederick Douglas 9
Appointments
Education, State Board of 52; 54
Utilities Commission 18; 38; 39
Armed Forces
Gibson, Henry Gardner "Red" 30
Honoring winners of the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, and Silver Star 20; 22
Arts—Poole, Charles Cleveland "Charlie" 21

B

Baker, Elzie Wylie "Buck", Sr. 12
Bath, Town of
300th Anniversary 16
Meeting of General Assembly to commemorate 300th anniversary 8
Beaufort County
Bath, Town of –*see* that heading
Black History Month 11
Blair, Ezell, Jr. 1
Burr, John 15

C

Caldwell County
Hudson, Town of –*see* that heading
Campbell, June Elizabeth Kay 24
Catawba County
Newton, City of –*see* that heading
Coats, Town of—100th Anniversary 14
Colleges And Universities—Sigma Gamma Rho Sorority honored 41
Columbus County
Tabor City, Town of –*see* that heading
Community Colleges
Freelander, Abraham L. 49
Haywood Community College 40th anniversary 49

Community Colleges, State Board of—
election of members 55
Creedmoor, Town of—100th Anniversary 5

D

Davis, Robert Monroe, Sr. 48
Deceased Persons
Blair, Ezell, Jr. 1
Campbell, June Elizabeth Kay 24
Edwards, Rev. Sherley W. 37
Former members of the General Assembly—
see General Assembly
Gaines, Clarence E. "Big House", Sr. 36
Gibson, Henry Gardner "Red" 30
Goins, James Donald "Don" 4
Graham, James Allen "Jim" 25
Jones, John Wesley 47
Lambeth, James Brantley, Jr. 45
McNairy, Carolyn 44
McNairy, Dorothy 44
Phillips, Barbara Kinard 53
Torrence, Jacqueline Carson "Jackie" 31
Dismal Swamp Canal bicentennial 33
Duplin County
Warsaw, Town of –*see* that heading

E

Earnhardt, Ralph Dale, Sr. 12
Earnhardt, Ralph Lee 12
Easley, Michael F.—invited to address GA 6
Eden, City of—Charlie Poole Music Festival 21
Education—contested election of Superintendent
of Public Instruction 51
Education, State Board of—confirmation of
Governor's appointments 52; 54
Edwards, Rev. Sherley W. 37

F

Fitch, Cora Whitted 40
Fitch, Milton F., Sr. 40
Flock, Julius Timothy "Tim" 12
France, William Henry Getty "Big Bill" 28; 29
Franklin, Town of—150th Anniversary 2
Freelander, Abraham L. 49
Futrell, Ashley Brown 19

G

Gaines, Clarence E. "Big House", Sr. 36
Garner, Town of—100th Anniversary 26
General Assembly
Adjournment
Reconvened session 59
Regular session 58
Appointments –*see* that heading
Contested election of Superintendent of Public Instruction 51
Deceased former members
Alexander, Frederick Douglas 9
Davis, Robert Monroe, Sr. 48
Futrell, Ashley Brown 19
Hall, John D. 50
Hiatt, William "Bill" Seth 35
Humphrey, Hubert B., Jr. 3
Kennedy, Harold Lillard, Jr. 13
Thomas, William Holland 57
Election of members of the State Board of Community Colleges 55
Former House Chaplain James Brantley Lambeth, Jr. honored 45
Inviting Governor Michael Easley 28; 6
Joint sessions 6; 20; 23; 28; 29; 51; 52; 54
Meeting in Bath to commemorate 300th anniversary 8
Gibson, Henry Gardner "Red" 30
Gill, Dr. Joseph Armstrong—Dismal Swamp Canal bicentennial 33
Goins, James Donald "Don" 4
Governor—confirmation of Governor's appointments to State Board of Education 52; 54
Graham, James Allen "Jim" 25
Grandy, Moses—Dismal Swamp Canal bicentennial 33
Granville County
Creedmoor, Town of –*see* that heading
Greensboro, City of—honoring sit-in movement participants 1

H

Hall, John D. 50
Hall, Talmadge 15

Harnett County
Coats, Town of –*see* that heading
Harris, Paul P. 10
Hiatt, William "Bill" Seth 35
Historic Sites And Monuments—Dismal Swamp
Canal bicentennial 33
Hudson, Town of—100th Anniversary 27
Humphrey, Hubert B., Jr. 3

J

Jefferson, Harry 15
Jocko Flocko 12
Johnson, Nannie Mae Gahn 41
Jones, John Wesley 47

K

Kennedy, Harold Lillard, Jr. 13
Khazan, Jibreel 1

L

Lambeth, James Brantley, Jr. 45
Lee, Howard N. 18
Little, Mary Lou Allison 41
Love, Thaddeus 46

M

Macon County
Franklin, Town of –*see* that heading
Marbury, Vivian White 41
Martin, Bessie M. Downey 41
Matthews, Keith "Banjo" 12
McCain, Franklin 1
McClure, Cubena 41
McDuffie, Frank Howe, Sr. 43
McDuffie, Sammie Sellers 43
Mclendon, John B., Jr. 15
McNairy, Carolyn 44
McNairy, Dorothy 44
McNeil, Joseph 1
Minorities
Alexander, Frederick Douglas 9
Black History Month 11
Campbell, June Elizabeth Kay 24
Honoring founders of CIAA basketball tournament 15

Minorities—continued
Honoring sit-in movement participants 1
McDuffie, Frank Howe, Sr. 43
McDuffie, Sammie Sellers 43
Player, Dr. Willa B. 17
Scott, Wendell Oliver 12
Women's History Month 17
Woodson, Carter G. 11
Motor Vehicles, Division of—Hiatt, William "Bill" Seth 35
Music–*see* Arts

N

NASCAR Legends 12
Newton, City of—150th Anniversary 32

P

Parks And Recreation Areas—Dismal Swamp Canal bicentennial 33
Person County
Roxboro, Town of –*see* that heading
Petty, Adam Kyler 12
Petty, Lee 12
Phillips, Barbara Kinard 53
Player, Dr. Willa B. 17
Poole, Charles Cleveland "Charlie" 21

R

Racing–*see* Sports
Redford, Hattie Mae Dulin 41
Richmond, David 1
Roberts, Edward Glenn "Fireball" 12
Rockingham County
Eden, City of –*see* that heading
Rotary International—100th Anniversary 10
Roxboro, Town of—150th Anniversary 56

S

Salemburg, Town of—100th Anniversary 7
Sampson County
Salemburg, Town of –*see* that heading
Scott, Wendell Oliver 12
Sports
Gaines, Clarence E. "Big House", Sr. 36
Honoring founders of CIAA basketball tournament 15

Sports—continued
Honoring NASCAR 28; 29
Honoring NCAA champions 23
NASCAR Legends honored 12
UNC-Chapel Hill basketball team 34

T

Tabor City, Town of—100th Anniversary 42
Thomas, William Holland 57
Torrence, Jacqueline Carson "Jackie" 31
Turner, Curtis Morton 12

U

University of North Carolina
UNC-Chapel Hill
Honoring NCAA champions 23
UNC-Chapel Hill basketball team 34
Utilities Commission—appointments 18; 38; 39

V

Veterans–*see* Armed Forces

W

Wake County
Garner, Town of –*see* that heading
Warsaw, Town of—150th Anniversary 46
Whiteside, Dorothy Hanley 41
Women—Women's History Month 17
Woodson, Carter G. 11